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BEFORE THE
FEDERAL MARITIME COMMISSION

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Docket No. 09-01

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

MITSUI O.S.K. LINES, LTD.,

COMPLAINANT,

v.

GLOBAL LINK LOGISTICS, INC.; OLYMPUS PARTNERS, L.P.;
OLYMPUS GROWTH FUND III, L.P.; OLYMPUS EXECUTIVE FUND, L.P.; LOUIS J.
MISCHIANI; DAVID CARDENAS; KEITH HEFFERNAN;
CJR WORLD ENTERPRISES, INC.; and CHAD J. ROSENBERG,

RESPONDENTS.

**COMPLAINANT MITSUI O.S.K. LINES, LTD.'S RESPONSE TO
RESPONDENT AND CROSS COMPLAINANT GLOBAL LINK
LOGISTICS, INC.'S PROPOSED FINDINGS OF FACT
IN FURTHER SUPPORT OF MOL'S CLAIMS AGAINST RESPONDENTS
AND IN OPPOSITION TO GLL'S COUNTER-COMPLAINT**

Pursuant to the October 16, 2012 Order and Rule 221 of the Commission's Rules of Practice and Procedure, Complainant Mitsui O.S.K. Lines, Ltd. ("MOL") hereby responds to Respondent and Cross Complainant Global Link Logistics, Inc.'s ("GLL" or "Global Link") Proposed Findings of Fact ("PFF") as follows:

1. Global Link is a non-vessel operating common carrier ("NVOCC") licensed by the Federal Maritime Commission ("FMC" or "Commission") that provides ocean transportation services between Asia and the United States. See Brian Pinkett Dec. at ¶ 2, January 22, 2013, attached as Exhibit A (GLL App. 1).¹

¹ Although some of the attached Exhibits were previously marked as Confidential or Attorney's Eyes Only, Global Link has consulted with the parties and they have not identified any information in those Exhibits as containing Confidential material.

RESPONSE: Admitted.

2. Global Link was founded by Chad Rosenberg in 1997. Chad Rosenberg Dep. at 99:18-19, October 7, 2008, attached as Exhibit B (GLL App. 5).

RESPONSE: Admitted.

3. During the time period at issue in these proceedings, Global Link entered into service contracts with steamship lines. Mitsui O.S.K. Lines ("MOL") was one of the steamship lines with which Global Link had service contracts. Brian Pinkett Dec. at ¶ 3, Exh. A (GLL App. 1). MOL contracts with the Hecny Group, a Hong Kong based logistics company that sometimes acted as an origin agent for Global Link were also used for a substantial number of shipments for Global Link customers. Arbitration Award at 6, Exh. G (GLL App. 67).

RESPONSE: Admit MOL entered into service contracts with GLL and Hecny, but except as otherwise admitted, deny the remaining allegations of PFF 3.

4. Until 1984, U.S. law required common carriers by water to publish tariffs setting forth the rates and changes applicable to the transportation services they offered. The Shipping Act of 1984, however, permits carriers to deviate from this obligation in instances when a carrier and shipper enter into a service contract pursuant to which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period and the carrier commits to a certain rate or rate schedule and a defined service level. 46 U.S.C. § 40102(20).

RESPONSE: This is a legal conclusion rather than a statement of fact. MOL admits that the first sentence is an accurate statement of the law prior to 1984. MOL denies the second sentence on the grounds that a service contract is a lawful alternative to

RESPONSE: MOL never consented to the use of any document marked "Confidential" or "Attorney's Eyes Only", but agreed to consider treating these documents as suitable for public viewing once MOL had had an opportunity to review GLL's papers in their entirety. MOL continues to maintain that all documents which reference conversations involving or including Kevin Hartmann, Vice President of Law and Insurance for MOL (America), are privileged and confidential.

and not a deviation from a tariff rate. MOL further denies the second sentence on the grounds that under 46 U.S.C. §41104(2)(A), a common carrier may not provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules, and practices contained in a published tariff or a service contract filed with the Commission.

5. During 2004-2006 Paul McClintock was the Vice President/General Manager of the Southeastern Region of the United States for MOL. Paul McClintock Dep. at 32:1-4, 33:1-11, 37:11, September 21, 2011, attached as Exhibit C (GLL App. 11, 12). In that capacity, MOL's regional sales, customer services and operations people reported to him. *Id.* at 33:14-16 (GLL App. 11); Rebecca Yang Dep. at 23:2-20, October 4, 2011, attached as Exhibit D (GLL App. 33). During the relevant time period up to 100 people reported to him. (McClintock Dep. at 34:1-6, Exh. C (GLL App.12).)

RESPONSE: Admit that throughout this time period McClintock controlled all MOL sales, customer service, trucking and equipment in this region of the United States.

6. In 2007, Mr. McClintock assumed responsibility for MOL sales throughout the entire United States. *Id.* at 37:11-22 (GLL App. 12). Mr. McClintock had primary oversight responsibility for Global Link. *Id.* at 40:1-7 (GLL App. 13).

RESPONSE: Admit in 2008 McClintock assumed responsibility for MOL sales throughout the entire United States and had primary oversight responsibility for Global Link, but except as specifically admitted, deny each and every remaining allegation in paragraph 6.

7. Rebecca Yang was MOL's primary contact with Global Link. *Id.* at 43:10-18 (GLL App. 14). "[I]t was Rebecca's account" and she would handle issues with contract negotiations and rates." *Id.* at 51:13-23 (GLL App. 15).

RESPONSE: Admit that Rebecca Yang was MOL's primary contact with Global Link. Deny the remaining allegations contained in PFF 7, and specifically deny that Yang had authority to approve contracts or rates with Global Link (McClintock Dep., 50:20-52:9 and 58:3-60:19 (MOL Exh. CI, MOL App. 2005-06)).

8. Rebecca Yang primarily negotiated amendments and revisions to the Global Link service contracts in terms of prices and locations, but because of the importance of Global Link as an account, Mr. McClintock would become personally involved in regard to substantive changes to these contracts. *Id.* at 60:21-61:19 (GLL App. 16); *see also* Yang Dep. at 16:21-17:25, Exh. D (GLL App. 31) (because Global Link was a huge customer, Paul McClintock was also involved in handling their business).

RESPONSE: Admit Rebecca Yang and Paul McClintock testified they would negotiate proposed amendments and revisions to Global Link service contracts. However, they also testified that all rate and pricing matters had to be sent to and approved by MOL trade management (McClintock Dep., 50:20-52:9 and 58:3-60:19 (MOL Exh. CI, MOL App. 2005-06)) (Yang Dep. 50:15-25 (MOL Exh. CJ, MOL App. 2024)).

9. The Commission defines split routing as occurring "when [a shipper] books cargo with a vessel-operating common carrier (VOCC) for shipment to one inland destination in the United States while intending to deliver the cargo to a different inland destination." *See* August 1, 2011 Commission Order in Response to Appeal of ALJ's June 22, 2010 Order, Docket No. 09-01 (91) at 3.

RESPONSE: The August 1, 2011 Commission Order in Response to Appeal of ALJ's June 22, 2010 Order, Docket No. 09-01 speaks for itself and defines split routing in the context of this case. Deny there is any general definition of this term.

10. Jim Briles, who was Global Link's primary contact with MOL during the relevant time period, spoke to Paul McClintock and Rebecca Yang frequently, "probably a couple of times a month," about split moves during the 2004-2006 time period. *See* Jim Briles Dep. at 132:19-21, June 4, 2008, attached as Exhibit E (GLL App. 55).

RESPONSE: Admit that Briles was a primary contact for GLL and that there is evidence to support the view, despite the testimony of McClintock and Yang to the contrary (McClintock Dep., 104:22-105:2 and 234:3-11; Yang Dep., 14:4-16; MOL Exh. CI and CJ, MOL App. 2008, 2009 and 2019), that both of them had communications with Briles about "split routing" (as that term is defined in PFF 9).

Answering further, MOL maintains that Briles' communications about "split routing" were limited to McClintock and Yang. In particular, Briles testified as follows:

Q. So MOL, in your experience, has a policy of recommending that NVOCCs conduct split moves?

A. Do they have a policy?

Q. Right.

A. I don't know if they have a policy.

Q. Do you that this is just something that Paul McClintock and – who was the other person?

A. Rebecca Yang.

Q. Is that just the way they do business?

A. I don't know. I mean, it was a common practice between us and them.

Q. It was a common practice between Global Link and those two individuals?

A. Who represented MOL, yes?

Q. Do you deal with other people at MOL that recommended that you conduct split moves?

A. They were our contacts at the company.

Q. Did you ever hear of or have contact with anyone at MOL who refused to do a split move?

A. At that level, no.

Q. At a different level?

A. I know situations came up with operations, which was below it. But at that level, those were our key contacts, and they were in charge of sales and operations, no, there was no issue. They actually encouraged it.

Q. Who encouraged it?

A. Paul and Rebecca.

Briles Dep. 125:10-126:19 (GLL App. 53-54).

11. Although some carriers discouraged split routing, MOL did not. *Id.* at 127:13-24, 130:7-11 (GLL App. 54, 55). Both Paul McClintock and Rebecca Yang, who were Global Link's key contacts at MOL and the individuals in charge of sales and operations at MOL, encouraged split moves. *Id.* at 125:16-27:24 (GLL App. 53-54).

RESPONSE: Deny that MOL knew about or encouraged split routing. Whereas McClintock and Yang both denied any prior knowledge or encouragement of "split routing" during their respective depositions (McClintock Dep., 104:22-105:2 and 234:3-11; Yang Dep., 14:4-16 and 29:21-30:9) (MOL Exh. CI and CJ; MOL App. 2008-09 and 2019-21), MOL admits there is evidence that shows McClintock and Yang were aware of split routing taking place and they, together with GLL, went to great effort to hide it from everyone else at MOL, including management.

In particular, Jim Briles testified that McClintock told him to not discuss "split routing" with anyone else at MOL.

Q. Did Mr. McClintock ever tell you who you should or should not talk to about split moves?

A. The only conversations we ever had were to keep it between us.

Q. Keep it between whom?

A. At the high-level management of Global Link and MOL. And we didn't – our operations group didn't talk about it.

Q. What did you understand Mr. McClintock to mean specifically by "Keep it between us?" Who were the high-level people at Global Link and the high-level people at MOL who were permitted to speak about split moves?

A. I guess I would back away from the word "permitted." It was never, this is in this box. Keep it.

I was kind of Paul McClintock, who was in charge of MOL sales and operations, and then, of course, Chad knew about it. I knew about it. Gary – actually, our whole organization knew about it.

Briles Dep. at 133:19-134:17 (GLL App. 55-56).

Since Briles testified earlier that GLL only communicated with MOL through McClintock and Yang (*see* MOL Reply to GLL PFF 10), it is clear that McClintock and Briles agreed that "split routing" would not be discussed with anyone else at MOL. To the extent McClintock and Yang encouraged "split routing," they did so without any authority from MOL. *See also* Briles Dep. at 125:20 and 134:3-17; MOL Exh. "U" (MOL App. at 1225-6); Rosenberg Declaration at ¶¶ 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at ¶¶ 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at ¶ 5 (CJR Exh. C) (CJR App. at 29)).

Edward Feitzinger, Senior Vice President of Golden Gate Logistics, testified that GLL knew that McClintock was colluding with GLL to cheat MOL and that this had to be kept a secret from everyone else at MOL. Mr. Feitzinger testified as follows:

Q. Did you ever ask anyone why Mitsui was willing to engage in split shipments if split shipments were not proper?

A. Yes.

Q. Who did you ask?

A. I -- somebody on the Global Link management team.

. . . .

A. And so we had dialogues with the team, saying, you know, what is MOL's -- does MOL, you know, know ["split routing"] is going on and -- you know, and the answer that was given, I couldn't tell you whether it was Jim [Briles] or Gary [Meyer], again, that was two of the likely suspects, was that we had helped make Paul [McClintock] a success in MOL and that because Paul had been successful and, you know, it was -- this was something that was sort of kept on the quiet and that Paul [McClintock] -- that the people [at MOL] in Oakland who were [with] MOL Americas didn't know about ["split routing"] and that we at Golden Gate shouldn't talk to MOL.

It was a big discourse, because we were right next to MOL here, and we thought it would be good to develop a relationship with them since we're 15 minutes away. And Jim [Briles] was just adamant that we not develop a relationship with [MOL in] Oakland.

Deposition of Edward Feitzinger dated July 15, 2008 ("Feitzinger Dep.") at 205:10-206:23 (MOL Exh. CH, MOL App. 1995-96).

In summary, Mr. Feitzinger testified that GLL colluded with McClintock to allow "split routing" and to keep "split routing" a secret from the rest of the MOL. *See also* MOL's Reply to PFF 122.

Despite evidence to the contrary, both McClintock and Yang denied any knowledge or involvement with GLL's "split routing" scheme during their respective depositions on September 21, 2011 and October 4, 2011. *See* McClintock Dep. at 104:22-105:2 ("I've never heard the term "split bill" . . .); 234:3-16 ("Never heard of [split routing] in my career until this."); 235:9-18 ("[I]sn't it true that you were unaware of the fact that Global Link was split-routing thousands upon thousands of shipments without the knowledge of

Mitsui? A: Correct.”); 253:10-14 (“Had you been aware of the split routings, these thousands of thousands of split routings on the part of Global Link Logistics, would you have notified people in the Mitsui chain of command? A: Absolutely.”); 255:10-23 (“You, as regional sales manager for southwest [or vice president for North American sales for Mitsui], you never had the authority to deviate from the Mitsui tariff or the Mitsui service contract, correct? A: That is correct.”); 257:19-259:8 (“[W]ould you agree that it’s improper to do something like split-routing on the basis of thousands, maybe tens of thousands of shipments without the knowledge or the authorization of the steamship lines company? A: Again, I think my position on that would be to take it up with the legal guys, but my opinion would be is yes, that doesn’t seem consistent with the bill of lading or what we should do. . . .”) and Yang Dep. at 14:4-16 (“Are you familiar with the term “split routing”? A: You know what? We never used split routing. Never.”); 29:21-30:9 (“I did remember Kevin Hartmann said we are going to sue, we are going after Global Link. And he did ask us questions, but that was the first time I heard this term “split shipment,” I believe. And I remember looking at Kevin Hartmann and I’m like what does that mean, “split shipments”?). Except as specifically admitted, deny each and every remaining allegation contained in PFF 11.

12. It was a “common practice” between Global Link and MOL to do split moves. *Id.* at 125:10-126:19 (GLL App. 53-54).

RESPONSE: Denied. It was a common practice for GLL to do split moves and Paul McClintock and Rebecca Yang conspired with GLL to keep split routing a secret from the rest of MOL. *See* MOL Reply to PFF 11. As explained in MOL’s Reply to PFF

11, both individuals consistently denied any prior knowledge or participation with “split routing” throughout their respective depositions.

By McClintock’s own admission:

- McClintock knew that “split routing” was improper (“[W]ould you agree that it’s improper to do something like split-routing on the basis of thousands, maybe tens of thousands of shipments without the knowledge or the authorization of the steamship lines company? A: Again, I think my position on that would be to take it up with the legal guys, but my opinion would be is yes, that doesn’t seem consistent with the bill of lading or what we should do. . . .” McClintock Dep. at 257:19-259:8) (MOL Exh. CI; App. 2011-12);

- he did not have the authority to approve “split routing” (“You, as regional sales manager for southwest [or vice president for North American sales for Mitsui], you never had the authority to deviate from the Mitsui tariff or the Mitsui service contract, correct? A: That is correct.” *Id.* at 255:10-23); and

- it was his responsibility to report “split routing” to MOL (“[I]sn’t it true that you were unaware of the fact that Global Link was split-routing thousands upon thousands of shipments without the knowledge of Mitsui? A: Correct.” *Id.* at 235:9-18); (“Had you been aware of the split routings, these thousands of thousands of split routings on the part of Global Link Logistics, would you have notified people in the Mitsui chain of command? A: Absolutely.” *Id.* at 253:10-14);

Their consistent denials of any involvement with “split routing” is clear evidence that McClintock and Yang knew: (a) “split routing” was wrong; (b) “split routing” was not approved or authorized by MOL; and (c) MOL would end the practice had it known “split routing” existed. *See* reply to PFF 122.

13. Paul McClintock suggested that they should keep the conversations about split routing to high-level management of Global Link and MOL. *Id.* at 133:19-34:23 (GLL App. 55-56).

RESPONSE: Denied. GLL has misconstrued Briles' testimony. Briles in fact testified as follows:

Q. What did you understand Mr. McClintock to mean specifically by "Keep it between us?" Who were the high-level people at Global Link and the high-level people at MOL who were permitted to speak about split moves?

MR. FINK: Object to the form.

A. I guess I would back away from the word "permitted." It was never, this is in this box. Keep it.

It was kind of Paul McClintock, who was in charge of MOL sales and operations, and then of course, Chad knew about it. I knew about it. Gary—actually, our whole organization knew about it.

Briles Dep. at 134:3-17; MOL Exh. "U" (MOL App. at 1226).

Thus, GLL understood that any discussion of split routing should be limited to McClintock, and kept from the rest of MOL and that McClintock was not authorized to agree to "split routing."

14. Although some issues arose at MOL's operations level in regard to split routing, the staff reported to Paul McClintock, and Paul McClintock and Rebecca Yang encouraged split routing. *Id.* at 125:16-127 (GLL App. 53-54).

RESPONSE: Admit that some issues arose at MOL operations level in regard to cargo being delivered to destinations other than the destinations on MOL bills of lading. Deny that any MOL operations personnel understood this to be split routing. Deny that

McClintock and Yang encouraged “split routing,” but admit they had knowledge of the practice. See reply to PFF 10-13.

15. John Williford, a Global Link Director, testified that Paul McClintock, who was the senior sales person at MOL that Global Link dealt with, knew about split routing. See John Williford Dep. at 206:10-17, July 8, 2008, Exh. F (GLL App. 58); see also, Williford Dep. at 210:3-12 (GLL App. 59) (reflecting that McClintock had been doing split routing for a while and was an “active participant” in MOL- Global Link split routing).

RESPONSE: Admit that the evidence supports that McClintock had knowledge of split routing and conspired to keep split routing a secret from MOL. See reply to PFF 10-13. See also Rosenberg Declaration at ¶¶ 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at ¶¶ 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at ¶ 5 (CJR Exh. C) (CJR App. at 29).

Williford further testified that McClintock conspired with Jim Briles of GLL to keep “split routing” a secret. Williford Dep. at 210:15-21 (“I just knew that [Paul McClintock] – you know, he was kind of in cahoots with Jim Briles on [split routing].” GLL App. 59) and 223:1-4 (“Paul McClintock, I understood that later I – yeah, after the fact, I learned that Paul McClintock was in on the whole thing, yes.” GLL App. 61).

16. Williford distinguished between MOL, which collaborated on split routing with Global Link, and other shipping lines such as Maersk and P&O Nedlloyd, which did not. *Id.* at 222:24-223:07 (GLL App. 60-61).

RESPONSE: Deny MOL collaborated on “split routing.” See reply to PFF 10-16. If as alleged Maersk and P&O Nedlloyd did not allow “split routing,” this assertion by

Williford demonstrates that the practice was not customary in the industry as alleged by Respondents. *See also* reply to PFF 122, *infra*.

17. MOL preferred that Global Link engage in split routing as it saved MOL from the inconvenience and administrative burden of having to negotiate numerous additional door points rather than simply shipping goods to regional points. Chad Rosenberg Dep. at 204:8-205:2, Exh. B (GLL App. 6)

RESPONSE: Denied. Chad Rosenberg's speculation as to MOL's alleged knowledge and participation in GLL's "split routing" scheme has no probative value and is contrary to the evidence. Among other things: (a) Global Link's service contracts with MOL had a number of door points (MOL Exhs. "BV" thru "BZ"), and Global Link "split routed" shipments to door points already negotiated in those service contracts (*see, e.g.,* reply to PFF 19, 20 and 25, *infra*), evidence that split routing was not for the "convenience" of MOL; (b) the GLL service contracts were amended a number of times thereby demonstrating that amendments to these contracts were commonplace and not burdensome; and (c) if MOL was of the view that rates to regional points were acceptable, the contracts could easily have been amended to provide that the rate for one regional point covered transportation to multiple points within a given geographical area. It defies common sense to believe that instead of such a simple solution, MOL would insist upon the continuation of the complicated and burdensome split routing scheme requiring numerous fictional documents. McClintock's own testimony confirms that MOL would never have willingly authorized "split routing" as a common practice, had it known of its existence. *See* reply to PFF 10-16. GLL undertook "split routing" not to provide a benefit for MOL, but to secure rates from MOL that it would not otherwise have been entitled to receive.

18. Most of the shipments handled by MOL for Global Link during the relevant time period, from 2003 to May of 2006 and even into early 2007, were to door points, as opposed to container yards. *See* Paul McClintock Dep. at 62:4-18, Exh. C (GLL App. 17); Brian Pinkett Dec. at ¶ 4, Exh. A (GLL App. 1).

RESPONSE: Admit.

19. One of the significant benefits of the Global Link contracts to MOL was that Global Link took on most of the obligations in terms of actually delivering the goods from the MOL container yard to the door point. Paul McClintock Dep. at 63:3-13, Exh. C (GLL App. 17).

RESPONSE: Denied. MOL did not save time and expense through “split routing.” It is true that GLL communicated directly with truckers for deliveries to points in the U.S. However, this was part of the scheme to have GLL “preferred” truckers deliver cargo to destinations other than the destinations shown in MOL’s master bills of lading and the transportation purchase orders (“TPOs”) issued by MOL to those truckers. *See* Global Link Voluntary Disclosure (MOL Exh. C); McClintock Dep. at 283:8-284:14; Dee Ivy Dep. at 21:3 thru 22:7 (MOL Exh. “W”) (MOL App. at 1250-51); Email from Eileen Cakmur to John Williford of GLL dated July 16, 2006 (MOL Exh. Q) (MOL App. at 1206).

20. The willingness of Global Link to handle the inland transportation or delivery of the goods to the door point was a significant benefit to MOL because MOL did not have to do the work involved in handling such moves. *Id.* at 15:19-22 (GLL App. 9). MOL no longer had the burden of providing staff to coordinate the door moves. *Id.* at 16:15-17:20 (GLL App. 9); *see also* Yang Dep. at 66:14-67, Exh. D (GLL App. 40) (significant benefit to MOL in having

Global Link use its preferred truckers to deliver goods because it reduced the work load for MOL's operations staff).

RESPONSE: Denied. See reply to PFF 19. MOL still had to issue documentation to notify truckers of the availability of the container for pick up at the rail yard and issue the TPO which unknowingly contained the false delivery location or address provided by GLL. MOL was not saved any work because the trucker was going to deliver the container to the location set forth on the "Truckline" delivery order prepared by GLL, rather than to the destination on MOL's TPO.

21. During this time period, the railroads were imposing significant penalties for not timely removing containers from the rail yard. *Id.* at 18:1-20:4 (GLL App. 10). Ordinarily, in a door move, MOL assumed such responsibility and had to pay the costs associated with such detention charges. *Id.* at 17:21-18:15 (GLL App. 9-10). By having Global Link take over responsibility for the door moves, however, railroad detention charges were no longer MOL's responsibility. *Id.* at 16:15-22 (GLL App. 9); Rebecca Yang Dep. at 67:19-68:16, Exh. D (GLL App. 40) (if Global Link uses its preferred trucker, Global Link assumes obligation to pay railroad demurrage charges).

RESPONSE: Denied. If a container was not picked up timely by the trucker at the railhead, any detention charges that MOL might incur would be billed to the shipper, in this case GLL.

22. When Global Link decided that it was going to take over that process, it was a "happy day" for McClintock. *Id.* It was a positive development for MOL because it took the burden off of MOL to make the appointment, to schedule the deliveries, and "to beat" the free time issue at the container yards in question. *Id.*

RESPONSE: Denied. GLL's scheme was unlawful and imposed significant harm on MOL; it was not "a positive development for MOL."

23. Rebecca Yang of MOL expressed appreciation to Chad Rosenberg for Global Link performing split routing. Chad Rosenberg Dep. at 204:14-22, Exh. B (GLL App. 6). She specifically told him that she preferred that Global Link do split routing and not diversions because that was more convenient for her. *Id.* at 218:13-18 (GLL App. 7).

RESPONSE: Unable to admit or deny what Yang may have said to Rosenberg, but deny all remaining allegations. Notwithstanding her deposition testimony wherein she denied any knowledge of split routing (Yang Dep. at 29:21-30:9), MOL admits that there is evidence to support that Ms. Yang conspired with GLL and/or condoned split routing. (Briles Dep. at 125:20 and 134:3-17; MOL Exh. "U" (MOL App. at 1225-6); Rosenberg Declaration at ¶¶ 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at ¶¶ 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at ¶ 5 (CJR Exh. C) (CJR App. at 29)). Any such actions on the part of Ms. Yang were completely contrary to the interests of MOL.

24. One of Global Link's customers was Vineyard Furniture in Winnsboro, Louisiana. Rebecca Yang Dep. at 126:15-127:8, 257:5-22, Exh. D (GLL App. 49, 51). There was no door point in the Global Link-MOL service contract for Winnsboro, Louisiana. *Id.*

RESPONSE: Admitted.

25. When Rebecca Yang asked Jim Briles at Global Link why certain door points were in the service contract with MOL, he told her that Global Link used the Martinsville door point for deliveries to Bassett Furniture, which is located in Bassett, Virginia. Rebecca Yang Dep. at 72:9-20, Exh. D (GLL App. 41). He also told her that Global Link had another door

point for delivery of goods to Vineyard Furniture, which is in Winnsboro, Louisiana. *Id.* at 72:15, 257:11-25 (GLL App. 41, 51).

RESPONSE: Denied. GLL mischaracterizes Yang's testimony. Rebecca Yang testified that she simply accepted Jim Briles' statement that certain customers, including Bassett, utilized certain door points, not that these door points were or were not in the GLL service contract (Rebecca Yang Dep. 72:9-20). In any event, Bassett, VA was in fact listed as a door point in GLL's service contracts. *See* MOL Exh. "BV" (001704, 08, 09, 11, 12, 22 and 23); Exh. "BW" (001744, 45, 46, 47, 49, 50, 51, 52, 53 and 55); Exh. "BX" (001784, 87, 89 and 93); and Exh. "BY" (001833 and 43). Nevertheless, GLL booked cargoes for delivery to Martinsville even though it intended and knew that such cargoes would actually be delivered to Basset, Virginia. Such conduct demonstrates that GLL's contention that it split routed because it was an administrative burden to add points to service contracts has no merit.

26. Because the door points in a service contract do not cover all the destinations where goods are being shipped, goods would often be diverted to another destination for the convenience of the customer. *Id.* at 40:13-18, Exh. D (GLL App. 35). Under those circumstances, MOL would not charge a diversion fee and would charge the customer for the destination listed on the bill of lading. *Id.* at 40:15-41:2, Exh. D (GLL App. 35).

RESPONSE: Denied. Rebecca Yang and Paul McClintock—without authority from MOL—allowed Global Link to book shipments to false final destinations with MOL and then would allow Global Link to arrange to have the shipments delivered to different final destinations. Since McClintock and Yang worked with Global Link to keep this "split routing" scheme a secret from MOL (*see* reply to PFFs 11, 13, 15, 17 and 23), and since the

“split routing” scheme occurred without MOL’s knowledge, MOL would bill Global Link based upon the final destination set forth on MOL’s bill of lading and MOL would have no reason to charge Global Link an additional diversion fee.

27. It was a “common occurrence” at MOL that although a bill of lading might say goods were going to one destination, such as West Monroe, Louisiana, they would actually be delivered to another location such as Winnsboro, Louisiana. Yang Dep. at 36:7-21, Exh. D (GLL App. 34). *That would not be a surprise to her or to anyone else at MOL. Id.* (emphasis supplied).

RESPONSE: Denied. Everyone at Global Link understood that MOL’s bill of lading would contain a false final destination and that Global Link would arrange to deliver the shipment to a different final destination. Deny that anyone at MOL other than Yang and McClintock had knowledge of cargoes routinely being delivered, pursuant to the split routing scheme, to destinations other than those set forth in MOL’s master bills of lading.

28. To Rebecca Yang’s knowledge MOL never sought to rerate shipments or billed for diversion charges in cases of split routing where goods were delivered to a different location than what was listed on the bill of lading. Yang Dep. at 61:18-62:10, 107:10-25, Exh. D (GLL App. 38-39, 45). If such diversion charges had been billed to Global Link, she would have known about it because Global Link would have complained. *Id.* at 62:9-19 (GLL App. 39).

RESPONSE: Denied. A diversion fee would apply only if a shipper instructed MOL to deliver the shipment to a destination different from the initial booking. GLL’s “split routing” scheme involved booking a shipment to a false final destination, arranging for its “preferred” trucker to deliver the shipment to a different destination, and

conspiring with McClintock and Yang to keep the scheme's existence a secret from the rest of MOL. *See* reply to PFF 10-16. Since MOL was not notified of any change in destination, no fee could be charged.

29. MOL was aware of Global Link's split routing at least as of 2004. *See* FoF 33-34.

RESPONSE: Denied. MOL did not have knowledge of split routing prior to 2008. *See* MOL Reply Brief at Section IV.

30. CJR World Enterprises, Inc. and Chad J. Rosenberg (collectively, the "Rosenberg Respondents") and Olympus Partners, L.P., Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, David Cardenas and Keith Heffernan (collectively, the "Olympus Respondents") were defendants in an arbitration proceeding (the "Arbitration") initiated by Global Link's current ownership. The Arbitration was predicated upon the Rosenberg and Olympus Respondents having fraudulently failed to disclose the split routing practices that were ongoing at Global Link prior to the current ownership's purchase of the company. *See* American Arbitration Association, Commercial Arbitration Tribunal Partial Final Award (Case No. 14 125 Y 01447 07, February 2, 2009) ("Arbitration Award") attached hereto as Exhibit G (GLL App. 62-124).

RESPONSE: Admitted.

31. The Arbitration Panel determined that "there is clear evidence that a senior sales representative of Mitsui knew that Global Link was engaged in split-routing, and Mitsui did not object – indeed Mitsui encouraged continuation of the practice -- because Mitsui preferred not to be bothered with negotiating a multiplicity of door points." Arbitration Award at 10 (GLL App. 71).

RESPONSE: The Arbitration Award speaks for itself. The phrase “senior sales representative of Mitsui” appears to be a reference to McClintock. Deny the remaining allegations.

No one from MOL testified in this arbitration and any observations or conclusions by the Arbitration Panel about MOL’s alleged knowledge or conduct were based solely upon the testimony of witnesses from GLL, Olympus Respondents and CJR Respondents, all of whom were incentivized to blame an empty chair. MOL’s interests were not represented by counsel and there was no party whose interests were aligned with MOL who was available to cross examine the witnesses upon which the Arbitration Panel relied upon for its conclusion that MOL encouraged “split routing.”

32. The Panel also squarely addressed the relative culpability of the current owner of Global Link, and of the Rosenberg and Olympus Respondents. The Rosenberg and Olympus Respondents asserted that Global Link, under the doctrine of *in pari delicto*, should be precluded from asserting a claim against them due to the failure to immediately terminate split routing when it purchased the company in June of 2006. *Id.* at 45-46 (GLL App. 106-107). In rejecting that defense, the Panel recognized that in order for the doctrine to apply, the plaintiff must be an active, voluntary participant in the unlawful activity that is the subject of the suit and no such showing could be made under the evidence in the record. *Id.* at 46 (GLL App. 107).

Claimants [Global Link’s current owner] unknowingly inherited a practice, which they continued until it was feasible to end the practice across the board, as they were advised by counsel would be a reasonable course. It is a stretch to call Claimants’ continuation of split-routing until the next ocean carrier contract reset “voluntary,” and to the extent Claimants may be considered culpable, their culpability does not rise to that of the Respondents who defrauded them.

Id. at 46 (GLL App. 107), citation omitted.

RESPONSE: The Arbitration Panel decision speaks for itself and deny that the doctrine of *in pari delicto* has any relevance to this proceeding.

33. In 2004, MOL informed Global Link that it wanted Global Link to use a specific trucker (All Coast) out of Savannah, Georgia for some shipments booked to Lenoir, N.C. See December 8, 2004 email attached hereto as Exhibit H (GLL App. 125).

RESPONSE: Admit Eric McCulloch of Global Link emailed “GLL Staff” and stated as follows:

Mitsui wants us to use All Coast out of Savannah for some of our shipments booked to Lenoir, NC—they advised they do not care if it is really delivering to the correct destination (we would just have to send All Coast the correct address)—please try and use them if possible.

MOL denies that this email has any probative value as to MOL’s prior knowledge of GLL’s “split routing” scheme because this email does not come from anyone at MOL, does not identify any MOL employee, and is nothing more than an unsubstantiated allegation by a GLL employee. Except as specifically admitted, denies each and every remaining allegation contained in PFF 33.

34. In that email, Eric McCulloch of Global Link wrote that MOL had advised Global Link that “they do not care if [All Coast] is really delivering to the correct destination (we would just have to send [All Coast] the correct address).” *Id.*

RESPONSE: Deny MOL advised Global Link that “they do not care if [All Coast] is really delivering to the current destinations (we would just have to send [All Coast] the correct address).” See reply to PFF 33.

35. In July of 2005, four years before this action was brought, Jim Briles sent an email to Rebecca Yang in which he explicitly referenced Global Link’s practice of using house bills of lading (HBLs) which had different delivery points than did the master bills of lading

(MBLs). *See* July 27, 2005 correspondence attached as Exhibit I (GLL App. 126); *see also* MOL Appendix 1494.

RESPONSE: Admit that Jim Briles emailed Rebecca Yang on July 27, 2005 to advise her of Global Link's efforts to keep its "split routing" scheme a secret from MOL, but except as specifically admitted, denies each and every remaining allegation contained in PFF 35. This email supports the conclusion that GLL was making every effort to keep the split routing practice a secret from MOL management.

36. Rebecca Yang admits that the email discussed split routing. *See* Rebecca Yang Dep. at 83:4-25, Exh. D (GLL App. 43).

RESPONSE: Deny. Rebecca Yang claimed to not remember receiving this email and further stated that she "probably just ignored it" since the subject line of the email contained "Trucker" (Yang Dep. at 84:2-21; MOL App. 2026). Answering further, MOL contends that her testimony concerning the July 27, 2005 email is additional evidence that she and Paul McClintock have continued to lie about their involvement with regard to Global Link's "split routing" (Yang Dep. at 84:22-85:21; MOL App. 2026). Except as otherwise admitted, denies each and every remaining allegation contained in PFF 36.

37. In discovery, MOL produced an email dated August 11, 2005 which initially reflects that Global Link coordinated with a trucker for the delivery of a split routing in which the bill of lading and the delivery order showed Martinsville, Virginia, "but the actual del[ivery] is Beltsville, Md." A copy of that correspondence is attached as Exhibit J (GLL App. 127). The correspondence is addressing a split routing. Yang Dep. at 78:2-79:21, Exh. D (GLL App. 42).

RESPONSE: Admit that Global Link coordinated with a trucker for delivery of a shipment to Beltsville, MD that had a Martinsville, VA destination on the master bill of

lading and TPO. The email shows that a diversion fee was paid and that MOL was seeking “honest” information from GLL about deliveries. As shown by other evidence, GLL undertook great effort to keep split routing a secret from MOL, particularly Laci Bass, the MOL employee referenced in this email. See Email from Jim Briles to Global Link staff dated August 15, 2005 (MOL Exh. AM) (MOL App. 1484).

38. Subsequently, on that same date, there was an email from the trucker summarizing a conference call in which Laci Bass from MOL and a Global Link employee participated. Exh. J (GLL App. 127).

RESPONSE: Admitted.

39. The August 11, 2005 email summarizes an agreement whereby MOL, Global Link and the trucker (Evans Delivery) agreed to accommodate each other’s concerns in regard to such split routings “on a case-by-case basis.” *Id.* In that correspondence there is a discussion as to how the parties will apportion the fees associated with the split routing. Yang Dep. at 79:22-80:1, Exh. D (GLL App. 42).

RESPONSE: Deny. See reply to PFF 37.

40. On August 15, 2005 -- almost four years before this Complaint was filed -- Ted Holt, a MOL Operations Manager, wrote to Paul McClintock and Laci Bass in regard to instances where the bill of lading says the goods are going to one location but the containers are actually going to a different place and asked whether MOL should be billing diversion charges associated with such split routing. See email attached as Exhibit K (GLL App. 128).

RESPONSE: Admit Ted Holt emailed Paul McClintock and wrote:

We are having trouble getting actual delivery locations for containers being diverted from Martinsville, Va. If the broker does not want to tell us when we ask, I am going to start billing all the back diversion charges that we have found out about, What do you think?

This is a simple process, but they do not feel they need to tell us where the containers are going to be diverted. Basically, the b/l says one thing and the container goes to a different place. What happens when there is a[n] accident? Who is responsible for the cargo?

Global Link has not proffered any evidence that Ted Holt, an MOL operations manager, had knowledge of the split routing scheme or had any understanding that GLL was deliberately mis-booking shipments and telling MOL it wanted shipments to travel to false destinations on a widespread basis, all while intending to arrange for delivery to different destinations. Ted Holt denies any such knowledge. See Declaration of Edward Y. Holt III (MOL Exh. CV) (MOL App. 2170-74).

41. In that email, Mr. Holt, wrote that: “Basically, the b/l [bill of lading] says one thing and the container goes to a different place.” *Id.*

RESPONSE: Admitted. See response to PFF 40.

42. In his written response to the email, Mr. McClintock indicated that he would discuss the matter with Kevin Hartmann, MOL’s General Counsel. *Id.*

RESPONSE: Admit McClintock wrote in his email: “Per our discussion, I will follow up with Kevin Hartmann for his feedback and advise,” but deny that McClintock in fact emailed or spoke with Kevin Hartmann about the issue of “split routing”. Paul McClintock Dep. at 303:21-305:1. When pressed at his deposition, McClintock could not confirm that he spoke with Kevin Hartmann. *Id.* The fact that there was no follow up with Hartmann confirms McClintock’s efforts to keep “split routing” secret from MOL management. Moreover, Mr. Hartmann denies receiving any email from or speaking with Mr. McClintock about “split routing.” McClintock Dep. at 305:2-306:6; Declaration of Kevin J. Hartmann dated February 17, 2012 (MOL Exh. BM); and Declaration of Thomas W. Kelly dated January 18, 2013 (MOL Exh. CB).

43. Mr. McClintock was questioned extensively in his deposition about this email. Specifically, referring to the statement that he would follow up with Kevin Hartmann, MOL's General Counsel, in regard to ongoing split routing and whether MOL should start billing diversion charges for such split routing, Mr. McClintock testified that "I am sure that an e-mail— *that this e-mail* [Global Link Exhibit J (GLL App. 127)] *was forwarded and discussed and reviewed.*" See Paul McClintock Dep. at 172:7-19, Exh. C (GLL App. 19) (emphasis supplied).

RESPONSE: Denied. GLL mischaracterizes Paul McClintock's testimony. McClintock testified that he had no specific recollection of forwarding the email in question on to Hartmann. McClintock Dep. at 303:21-305:1 (MOL Exh. CI; MOL App. 2014). McClintock in particular testified:

Q. Sitting here today under oath, can you tell me, to a certainty, that you did, indeed, forward this message to anyone at MOL?

A. No. I don't—I don't recall doing it.

Q. So you don't recall doing it?

A. No. I'm just telling you what I thought I would have done.

Q. So you have absolutely no recollection of forwarding this to anyone at MOL?

A. No, no, I do not. I'm just saying by looking at it, I'm sure I did, but my surety (sic) of doing it, I don't recall doing it, I guess is the point.

Q. Well, you're sure you did, but you don't recall doing it?

A. That's correct, that's correct.

Q. Do you recall any response to what you say you thing you were sure you did, but don't recall doing it?

MR. COLLINS: Objection, vague.

A. I don't recall this particular situation, I mean, I guess is the point.

Q. What discussions, if any, did you have with anyone else in the company about this?

A. Not a clue, don't remember.

McClintock Dep. at 303:21-305:1 (MOL Exh. CI; MOL App. 2014).

McClintock further testified that if he had discussed "split routing" with Hartmann he would have only "talked about . . . a very small percentage or one-off situations, as opposed to a common practice, as far as [he] knew. McClintock in particular testified:

Q. So it was—as you have consistently stated, the extent of the diversions that you've talked about were a small percentage or one-off situations, as opposed to a common practice, as far as you knew?

A. Correct.

Q. And that's what you would have asked about?

A. Correct.

Q. If you did something?

A. Right, that's right, yes.

McClintock Dep. at 305:19-306:6 (MOL Exh. CI; MOL App. 2014-15).

44. Mr. McClintock further testified that he knows that follow-up discussions in regard to the matter occurred internally. *Id.* at 177:3-22 (GLL App. 20).

Q. So you think you followed – you know you followed up with Kevin [Hartmann]?

A. Yes.

Id. at 177:20-22 (GLL App. 20).

RESPONSE: Denied. See reply to PFFs 42 and 43. GLL mischaracterizes McClintock's testimony. McClintock contradicted his own testimony in that he could not recall having discussed this issue with Kevin Hartmann, or anyone else at MOL.

45. Mr. McClintock testified that the split routing being addressed in the August 15, 2005 memo was a *regular occurrence*. *Id.* at 176:2-20 (GLL App. 20) (emphasis supplied).

RESPONSE: Denied. See MOL's response to PFFs 42, 43 and 44. McClintock later testified that he was unaware of the practice of "split routing." McClintock Dep. at 234:3-11 and 235:9-18 (MOL Exh. CI; MOL App. 2009).

46. In deposition questioning, it was noted that Mr. Holt wrote that "[w]e are having trouble getting actual delivery locations for containers being diverted from Martinsville."

Q. He's not talking about one issue, is he. So that's obviously a repeat issue? Is that correct?

A. Based on what he's saying there, I would say yes.

Id. at 168:2-15 (GLL App. 18).

RESPONSE: Denied. This testimony is wholly speculative and without foundation. Moreover, GLL mischaracterizes McClintock's testimony on split routing. See reply to PFFs 42 through 45.

47. Mr. McClintock testified that despite the knowledge that split routing was a regular occurrence, *Id.* at 176:10-15 (GLL App. 20), nothing was done to prevent further diversions or split routing by Global Link. *Id.* at 178:18-179:18 (GLL App. 21).

RESPONSE: Denied. The testimony cited is misleading and does not support the proposed finding. Mr. McClintock separately testified that he had knowledge of only a small number of diversions and no knowledge of any widespread split routing practice. (McClintock Dep. at 305:19-306:6, 235:9-237:19; MOL Exh. CI; MOL App. 2014-45 and

2009). While such testimony may be questionable and is contradicted by other evidence, it cannot be a basis for a finding that MOL took no action to prevent split routing. The overwhelming evidence is that split routing was to be kept a secret from MOL personnel. As such, it cannot be found and it makes no sense to find that MOL took no action to prevent a practice it knew nothing about (Briles Dep. at 125:20 and 134:3-17; MOL Exh. “U” (MOL App. at 1225-6); Rosenberg Declaration at ¶¶ 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at ¶¶ 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); Latham Declaration at ¶ 5 (CJR Exh. C) (CJR App. at 29); Declaration of Kevin J. Hartmann dated February 17, 2012 (MOL Exh. BM) and Declaration of Thomas W. Kelly dated January 18, 2013 (MOL Exh. CB).

48. MOL’s counsel specifically asked Mr. McClintock whether it was possible that he did not notify Kevin Hartmann about the split routing that was being conducted by Global Link. In response, McClintock testified that “well, when something like that would come up, we would say, hey, let’s – you know that needs to be raised up and looked at, *and I’m sure in this case, that’s exactly what I did.*” *Id.* at 239:10-23 (GLL App. 26) (emphasis supplied).

RESPONSE: Deny McClintock notified Hartmann about the split routing. McClintock testified that these “diversions” were a very small percentage of the total number of GLL shipments, or one-off situations (McClintock Dep. at 305:19-306:6; MOL Exh. CI; MOL App. 2014-15), and if he had discussed this issue with Kevin Hartmann, it would have been in connection with a very small percentage of shipments (*id.*). *See* reply to PFFs 42 through 45.

In addition, GLL’s assertion that McClintock did in fact notify Hartmann about “split routing” is contradicted by repeated denial of any prior knowledge or involvement

with the practice. *See* reply to PFFs 10-16. In particular, McClintock testified that if he had learned about “split routing,” he would have reported the practice to the MOL chain of command. McClintock Dep. at 253:10-14 (“Had you been aware of the split routings, these thousands of thousands of split routings on the part of Global Link Logistics, would you have notified people in the Mitsui chain of command? A: Absolutely.”) (MOL Exh CI; MOL App. 2010).

Any finding that McClintock notified Mr. Hartmann about split routing is contrary to the evidence. Mr. Hartmann denies that this occurred and there is no written evidence to support any such notification despite an exhaustive search. Hartmann Dec. at ¶¶8, 12, 19-20 (MOL Exh. BM) (MOL App. 1628-39).

49. Unsatisfied with that answer, MOL counsel tried again.

Q. So, looking at Exhibit 21 [the August 15, 2005 memo], a conclusion could also be drawn that the chain of command and Kevin Hartmann, were not, in fact, notified about these split routings. Isn't that correct?

A. *No, I would say no*, because – the only reason -- the biggest reason I would say no is because the guy who sent it, Ted Holt. Ted Holt would have made sure that there was follow-up and emails regarding this particular situation. There no way that would have -- that's – he's an operations manager. *There's no way he would have allowed that to happen. I am absolutely sure of that.*

Id. at 240:14-241:13 (GLL App. 26) (emphasis supplied).

RESPONSE: This testimony is refuted by Mr. Holt. *See* Declaration of Edward Y. Holt III. (MOL Exh. CV) (MOL App. 2170-94). Answering further, despite an exhaustive email search, no other emails with regard to this matter were found. *See* Declaration of David Fernandez (MOL Exh. CW) (MOL App. 2175-78). *See also* reply to PFF 42 through 48.

50. To eliminate any remaining doubt in this regard, Mr. McClintock further elaborated that “*I can assure you there was follow-up taken on that particular case.*” *Id.* at 241:23-242:1 (GLL App. 26) (emphasis supplied).

RESPONSE: Denied. Mr. McClintock’s testimony does not support this proposed finding of fact. See reply to PFF 42 through 49.

51. MOL counsel then suggested that MOL’s failure to produce emails reflecting further communication with Kevin Hartmann in regard to the split routing must prove that it never occurred. Again, however, Mr. McClintock’s testimony was to the contrary.

Q. If I told you that we looked extensively to see if this e-mail was forwarded to anybody within Mitsui, and we were unable to find such a forwarded e-mail, would that change your testimony at all?

A. *No, no, not in that particular case. There’s no way.*

Q. Why are you so certain that you would have forwarded it on when there’s no evidence of having forwarded it on to anyone?

A. Just because – just because I know that e-mail – I’m 100 percent sure of something else as well. That e-mail did not just go to those people that Ted would have also copied in and followed up with his own boss, because I wasn’t his boss. So for something like that to come to me, *I had no choice but to follow up with it, because I know that e-mail would have been forwarded to somebody else. It wouldn’t have stopped right there.*

Id. at 242:16-243:15 (GLL App. 27) (emphasis supplied).

RESPONSE: Denied. See MOL’s reply to PFFs 42 through 49.

52. After a further colloquy, MOL’s counsel tried one more time to get Mr. McClintock to recant his testimony that the email in question had been shared with Kevin Hartmann, MOL’s General Counsel. Again, however it was to no avail.

Q. So, isn’t it true that you could be mistaken about whether you had actually, in fact, forwarded that e-mail . . .

A. *I don’t see it that way at all.*

Id. at 245:10-19 (GLL App. 27) (emphasis supplied).

RESPONSE: Denied. See also, reply to PFFs 42 through 51.

53. Finally, unsatisfied with Mr. McClintock's answers to those questions, MOL had one of its other counsel ask him about the email to see if he could get a different answer. While conceding that he did not specifically recall forwarding the e-mail to Mr. Hartmann, Mr. McClintock remained positive that he did forward it to him. *Id.* at 304:7-13 (GLL App. 28).

RESPONSE: Denied. See reply to PFFs 42 through 51.

54. Rebecca Yang corroborates the testimony of Mr. McClintock. She testified that Paul McClintock informed her that he had talked to Kevin Hartman about what had happened and how to handle the situation and that Ted Holt had followed up in regard to the split routed container. Yang Dep. at 15:5-18, Exh. D (GLL App. 31).

RESPONSE: Denied. Rebecca Yang and McClintock are clearly adverse to MOL and have sought to hide the unlawful GLL split routing from MOL, an effort which they continued to pursue in their respective depositions (McClintock Dep., 104:22-105:2 and 234:3-11 (MOL Exh. CI; MOL App. 2008-09); Yang Dep., 14:4-16 and 29:21-30:9 (MOL Exh. CJ; MOL App. 2019, 2020-21). Rebecca Yang did not testify that she had any independent recollection of prior knowledge of "split routing" on the part of others at MOL. Ms. Yang also denied remembering or reading any emails involving "trucker" or "delivery order" (Yang Dep. at 49:8-20 and 84:6-85:15) (MOL App. 2023, 2026).

55. Rebecca Yang confirmed that as of August of 2005, Paul McClintock, Laci Bass, Ted Holt and MOL's General Counsel, Kevin Hartmann, knew about the split routing and considered billing for diversion charges but decided not to. *Id.* at 112:6-113:1 (GLL App. 46).

RESPONSE: Denied. See reply to PFF 54.

56. Rebecca Yang further confirmed that no investigation in regard to split routing was taken as a result of these communications. “At least nobody instructed [her] to investigate or anything like that,” despite the fact that she was MOL’s primary contact person with Global Link. *Id.* at 15:19-16, 109:6-18 (GLL App. 31, 45).

RESPONSE: Denied. MOL, aside from McClintock and Yang, had no knowledge of the split routing scheme. MOL did not and could not make a decision about investigating a scheme that it knew nothing about. See reply to PFFs 54 and 55.

57. West Monroe, Louisiana was a door point in the service contracts between MOL and Global Link, but Winnsboro, Louisiana and Baskon, Louisiana were not. *See* Brian Pinkett Dec. at ¶ 6, Exh. A (GLL App. 1).

RESPONSE: Admitted.

58. On December 21, 2005, Blake Shumate, the Regional Manager for Global Link, wrote Paul McClintock noting that MOL was paying Vineyard Express, a trucking company, only \$75 for taking goods from the ramp in Monroe, to Vineyard Furniture in Baskon and Winnsboro locations despite the fact that it is a 95 mile round trip. *See* December 21, 2005 correspondence attached as Exh. L (GLL App. 129-130). As a result, Global Link requested that MOL pay \$150 for round trips from Monroe to Vineyard Furniture. *Id.* (GLL App. 130).

RESPONSE: Admitted.

59. On the next day, Paul McClintock wrote back to Blake Shumate and Jim Briles agreeing to the \$150 adjustment. *See* Exhibit L (GLL App. 129). Thus, as of December of 2005, MOL agreed to increase the amount it paid truckers for draying goods for split routings from West Monroe to Baskon and Winnsboro, Louisiana.

RESPONSE: Admit Paul McClintock wrote to Blake Shumate and Jim Briles about approving an increase to \$150 for the inland truck movement, but except as specifically admitted, deny each and every remaining allegation contained in PFF 59. There is no evidence to show that Paul McClintock discussed, notified or communicated with anyone else at MOL with regard to this matter.

Answering further, this email contradicts McClintock's testimony in his deposition that he had no prior involvement with "split routing" or that if he became aware of "split routing" he would have notified the MOL chain of command. *See* reply to PFF 10-16.

60. On December 1, 2005, more than three and half years before this Complaint was filed, one of MOL's employees, Diane Chick, wrote to her supervisor, Jane Martin, noting that the "b/l[s [bills of lading] are showing West Monroe DOOR moves, but the delivery order I have for b/l #481637003 reads Winnsboro, LA, which is at least 30 miles south of West Monroe. We can only deliver to where the b/l reads unless the customer wants to pay the additional drayage." *See* correspondence attached as Exhibit M (GLL App. 132-133).

RESPONSE: Admit that in this instance MOL operations personnel discovered an unauthorized "diversion" of GLL shipment, but deny that this email is probative as to whether MOL has prior knowledge of GLL's systematic "split routing" scheme, and except as specifically admitted, denies each and every remaining allegation contained in PFF 60.

61. One other MOL employee weighed in noting that "you are not supposed to do this." *Id.*

RESPONSE: Admitted.

62. Kelly Johnson informed the other employees that "we are aware of that [the split routing], we will address this w/Jean Flaherty upon her return." *Id.*

RESPONSE: Deny that this email refers to or in any way supports a finding that these MOL employees were aware of GLL's split routing scheme. To the contrary, this email exchange shows that when confronted with an unauthorized diversion, MOL personnel appropriately raised questions and indicated it should not be done.

63. Jean Flaherty was an MOL Operations Manager. Yang Dep. at 50:17-18, Exh. D (GLL App. 37).

RESPONSE: Admitted.

64. Jane Martin then wrote an email addressed to Kelly Johnson, Amy Sinclair, Diane Chick, Rebecca Yang and Jeffrey Bumgardner, all five of whom were MOL employees, that they should "just cut the TPO [Transportation Order] for West Monroe and if this is to Vineyard Trucking they can work out the difference internally." Exhibit M (GLL App. 132)

RESPONSE: The email cited begins with "Per Rebecca," which was excluded from the quotation provided. Deny this email supports any approval of a split routing scheme by anyone other than Rebecca Yang. This email shows that operations personnel raised questions as to how to handle an isolated unauthorized diversion and the sales person responsible for the GLL account told them what action to take. This email further supports the conclusion that Yang sought to keep the GLL scheme a secret.

65. On October 13, 2006, Jane Martin of MOL and Glenn Nowakowski of Global Link corresponded in regard to diverting a container from Lenoir, North Carolina to Sugarland, Texas and diverting a container from Braselton, Georgia to Phoenix, Arizona. *See* correspondence attached as Exhibit N (GLL App. 135-136). Although Global Link did not have door points for Sugarland or Phoenix in its service contract with MOL, Rebecca Yang of MOL informed Global Link that it should engage in split routing by using the Forney, Texas rate that

was in the service contract between MOL and Global Link. *Id.*; *See* Brian Pinkett Dec. at ¶ 7, Exh. A (GLL App. 1).

Q. So . . . you were going to do it as a split routing using Forney as the contract rate?

A. Right. That was the only solution, because they only had that rate to Forney, Texas. Otherwise, we couldn't help them out.

Yang Dep at 130:9-14, Exh. D (GLL App. 50).

RESPONSE: Deny this pertains to the GLL split routing practice, since GLL was here requesting a different rate. This email exchange referred to a diversion request. Jane Martin of MOL acted appropriately, noting there was no rate to the desired destination and that it was too late to establish a new rate because the shipment had already left. It appears Rebecca Yang decided GLL could be charged a rate to another destination, located close to the desired destination. It is noteworthy that Ms. Yang's email to GLL about using the Forney rate was not copied to other MOL employees, unlike the prior emails which did include Ms. Martin of MOL.

66. As reflected in ¶ 57 above, West Monroe, Louisiana was a door point in the service contracts between MOL and Global Link but Winnsboro, Louisiana was not. *See* Brian Pinkett Dec. at ¶ 6, Exh. A (GLL App. 1).

RESPONSE: Admitted.

67. On November 14, 2006, Blake Shumate of Global Link sent a Shipline Delivery Order to Barbara Perry, Jean Flaherty, Kelly Johnson, Lauren Estrada, Diane Chick, JoAnn Gault, Lori Kyle, Jane Martin, and Rebecca Yang of MOL. *See* email and delivery order attached as Exhibit O (GLL App. 137-38). That Shipline Delivery Order reflects that, although the MOL bill of lading showed the destination as West Monroe, the goods were actually

delivered to Vineyard Furniture in Winnsboro, Louisiana. *See* Brian Pinkett Dec. at ¶ 5, Exh. A (GLL App. 1).

RESPONSE: Admit that is what the Shipline document reflects, but deny that MOL operations personnel had any understanding of “split routing” or that this document notified them of any unlawful practice scheme. GLL has not offered the testimony of any individual in connection with this or any other Shipline document. However, the GLL Voluntary Disclosure to the Commission clearly and unambiguously describes the split routing practice, the use of multiple sets of documents, and the use of fraudulent delivery orders. As GLL explained, it would book cargo with MOL and other carriers and in the booking misrepresent the destination of the shipment. GLL would follow up by sending MOL and other carriers fraudulent delivery orders (the so-called “Shipline” documents). The actual destinations would be contained in “Truckline” delivery orders which were sent to GLL’s preferred truckers, not to MOL or the other ocean carriers. In GLL’s Voluntary Disclosure, there are eight examples of the implementation of this fraudulent practice with regard to cargoes booked with MOL (MOL Exh. C; MOL App. 181).

Apparently, through some inadvertence, during a period of time, a relatively small number of Shipline documents with correct destinations were sent to some MOL personnel. There is no testimony or evidence about these documents, in particular why they were sent, whether there was any discussion about them, how, if at all they were used, etc. What is clear is that any Shipline delivery orders with the correct destinations were isolated and the exception from the standard practice. *See* GLL Voluntary Discl. ¶¶ 11-14 and Exhibit F. (MOL Exh. C; MOL App. 114-16, 179-572). *See also* MOL Reply Brief at Section IV.D.3.

68. The email and attached Delivery Order reflect that nine MOL employees were informed that this was a split routing, *i.e.*, the goods were being delivered to a different location than what was reflected on MOL's bill of lading and to a door point not contained in Global Link's service contract with MOL. Exhibit O (GLL App. 137-38).

RESPONSE: Denied. See reply to PFF 67.

69. Global Link sent scores of Shipline Delivery Orders (DOs) to MOL reflecting split routings to Vineyard Furniture in Winnsboro, Louisiana. Copies of such Delivery Orders sent by Global Link to MOL produced in discovery by MOL are attached as Exhibit P (GLL App. 139-204).

RESPONSE: Admit that there were other Shipline documents reflecting different destinations than those set forth in MOL master bills of lading sent to MOL. However, these represented a very small fraction of the estimated 75,000 containers that were shipped under GLL's "split routing" scheme. See Complainant's Statement in Response to August 16, 2012 Order to Submit Status Report dated September 17, 2012 (MOL Exh. V; MOL App. 1230). See also, reply to PFF 67.

70. Rebecca Yang testified that she was not surprised that no one from MOL's Operations staff discussed with her the fact that the goods were actually being shipped to Winnsboro, rather than West Monroe, or attempted to re-rate the shipments or seek diversion charges because in her experience such split routings occurred frequently. Yang Dep at 46:5-47:22 (GLL App. 36).

RESPONSE: Denied. GLL mischaracterizes her testimony. Yang testified that she did not know about split routing. Yang Dep. at 14:4-9 and 29:21-30:9 (MOL App. 2019-20). Rebecca Yang testified that she worked in sales and was not familiar with any

documents utilized by the MOL operations department. Rebecca Yang Dep. at 45:14-47:22 (MOL App. 2022-23).

71. Martinsville, Virginia was a door point in the service contracts between MOL and Global Link but Ridgeway, Virginia was not. See Brian Pinkett Dec. at ¶ 8 (GLL App. 2).

RESPONSE: Admitted.

72. In 2005 and early 2006, Global Link sent MOL over 80 Delivery Orders reflecting that, although the destination shown on the MOL bills of lading was Martinsville, Virginia, the goods were actually being delivered to Bassett Furniture in Ridgeway, Virginia. Copies of these Delivery Orders sent by Global Link to MOL produced in discovery by MOL are attached as Exhibit Q (GLL App. 205-294).

RESPONSE: Admit that such Shipline documents appear to have been sent, but deny they support any knowledge by MOL of an unlawful split routing scheme. See response to PFFs 67, 69 and 70.

73. Martinsville, Virginia was a door point in the service contracts between MOL and Global Link but Bassett, Virginia was not. See Brian Pinkett Dec. at ¶ 9 (GLL App. 2).

RESPONSE: Denied. Martinsville, VA and Bassett, VA were both listed as door points. See MOL Exh. BV (MOL App. 1704, 08, 09, 11, 12, 22 and 23); Exh. BW (MOL App. 1744, 45, 46, 47, 49, 50, 51, 52, 53 and 55); Exh. BX (MOL App. 1784, 87, 89 and 93); and Exh. BY (MOL App. 1833 and 43).

74. On October 31, 2005, Blake Shumate of Global Link sent Laci Bass of MOL an email with a Shipline Delivery Order attached reflecting that, although the destination shown on the MOL bill of lading was Martinsville, Virginia, the goods were actually being delivered to

Bassett Mirror in Bassett, Virginia. A copy of this email and the Delivery Order is attached as Exhibit R (GLL App. 295-296).

RESPONSE: Admit that these documents demonstrate GLL “split routed” to door destinations already negotiated in its service contract with MOL. *See* response to PFF 73.

Deny that Laci Bass understood from these documents that GLL was engaging in an unlawful split routing scheme. *See* response to PFF 67 and 69. Indeed, GLL took pains to keep split routing a secret from Laci Bass. *See* Email from Jim Briles to Global Link staff dated August 15, 2005 (MOL Exh. AM) (MOL App. 1484).

Since GLL “split routed” shipments to door points already negotiated in its service contracts, GLL cannot reasonably argue that “split routing” benefitted MOL by easing its administrative burden of having to negotiate additional door points. GLL repeatedly and continually “split routed” shipments with MOL because GLL benefited financially to the detriment of MOL.

75. In 2005 and January of 2006 Global Link sent MOL more than 50 Delivery Orders reflecting that, although the destination shown on the MOL bill of lading was Martinsville, Virginia, the goods were actually being delivered to Bassett Furniture in Bassett, Virginia. A copy of Delivery Orders sent by Global Link to MOL are attached as Exhibit S (GLL App. 297-359).

RESPONSE: Admit that such documents appear to have been sent, but otherwise deny the allegations of this proposed finding and deny MOL had knowledge of the unlawful split routing scheme. *See* reply to PFF 67 and 69.

76. Rebecca Yang testified that the MOL Operations staff would have had to look at the delivery orders in preparing MOL’s Transportation Orders and thus would have been aware

that the goods were going to a location that was not a door point in the MOL-Global Link Service Contracts. Yang Dep. at 60:25-61:22 (GLL App. 38).

RESPONSE: Denied. GLL mischaracterized Rebecca Yang's testimony. Rebecca Yang testified that she worked in sales and was not familiar with any documents utilized by the MOL operations department (Yang Dep. at 45:14-47:22; MOL Exh. CJ; MOL App. 2022-23). *See also* response to PFF 74. Moreover, Mr. McClintock testified that he did not know why the delivery orders would have been sent and did not believe they would be used by MOL personnel. The instructions given to truckers by MOL in TPOs would be based on the destinations in MOL's bills of lading, not some delivery order from GLL. Yang Dep. 221:4-12; (MOL Exh. CJ; MOL App. 2029) and McClintock Dep. at 230:3-18 (MOL Exh. CI; MOL App. 2030a);

77. Prior to the time period in question (2004-2006), MOL would have grouped the Martinsville, Ridgeway and Bassett, Virginia destinations and put in one rate. Yang Dep. at 96:1-23 (GLL App. 44). Under the new software, however, the Operations staff were supposed to enter each destination as a different entry. *Id.* The Operations staff, however, never paid any attention to that requirement. *Id.*

RESPONSE: Denied. GLL mischaracterizes Rebecca Yang's testimony. First, Bassett was a door destination located in GLL's service contracts with MOL, contrary to the representations of GLL. See MOL Exh. "BV" (001704, 08, 09, 11, 12, 22 and 23); Exh. "BW" (001744, 45, 46, 47, 49, 50, 51, 52, 53 and 55); Exh. "BX" (001784, 87, 89 and 93); and Exh. "BY" (001833 and 43). Second, Rebecca Yang—as an employee in sales—had no personal knowledge concerning the steps taken by MOL operations. See MOL's response

to PFF 70 and 76. Third, MOL operations personnel inserted final destination information for the TPO based upon the booking made by the shipper. *See also* reply to PFF 76.

78. Martinsville, Virginia was a door point in the service contracts between MOL and Global Link but Lynchburg, Virginia was not. *See* Brian Pinkett Dec. at ¶ 10 (GLL App. 2).

RESPONSE: Admitted.

79. On November 3, 2005, Global Link sent a Delivery Order to MOL reflecting that, although the destination shown on the MOL bill of lading was Martinsville, Virginia, the goods were actually being delivered to Lynchburg, Virginia. A copy of the Delivery Order sent by Global Link to MOL is attached as Exhibit T (GLL App. 360).

RESPONSE: Admit that it appears such document was sent, but deny that receipt of a Shipline Delivery Order by MOL operations personnel is probative evidence that MOL received notice of “split routing.” *See also*, reply to PFFs 67, 69 and 76.

80. Forney, Texas was a door point in the service contracts between MOL and Global Link but Fort Worth, Texas was not. *See* Brian Pinkett Dec. at ¶ 11 (GLL App. 2).

RESPONSE: Admitted.

81. On October 30, 2006, Blake Shumate wrote an email to Barbara Perry, Jean Flaherty, Kelly Johnson, and Lauren Estrada of MOL transmitting a Shipline Delivery Order reflecting that, although the destination shown on the MOL bill of lading was Forney, Texas, the goods were actually being delivered to Fort Worth, Texas. *See* correspondence attached as Exhibit U (GLL App. 361-62).

RESPONSE: Admit that such a document appears to have been sent, but denies that receipt of a Shipline Delivery Order by MOL operations is probative evidence that MOL received notice of “split routing.” *See* reply to PFFs 69, 70 and 76.

82. Martinsburg, Pennsylvania was a door point in the service contracts between MOL and Global Link but Tucker, Georgia was not. *See* Brian Pinkett Dec. at ¶ 12 (GLL App. 2).

RESPONSE: Admitted.

83. On August 14, 2006, Glenn Nowakowski of Global Logistics sent MOL, attention Laci Bass, four separate Delivery Orders reflecting that, although the destination shown on the MOL bills of lading was Martinsburg, Pennsylvania, the goods were actually being delivered to Cort Furniture Rental in Tucker, Georgia. Delivery Orders sent by Global Link to MOL are attached as Exhibit V (GLL 363-366).

RESPONSE: Admit that such a document appears to have been sent, but denies that receipt of a Shipline Delivery Order by MOL operations is probative evidence that MOL received notice of “split routing” by GLL. *See* reply to PFFs 69, 70 and 76.

84. West Monroe, Louisiana was a door point in the service contracts between MOL and Global Link but Atoka, Oklahoma was not. *See* Brian Pinkett Dec. at ¶ 13 (GLL App. 2).

RESPONSE: Admitted.

85. On January 4, 2007, Blake Shumate of Global Link sent an email to Barbara Perry, Jean Flaherty, Kelly Johnson and Lauren Estrada of MOL with a Delivery Order attached reflecting that, although the destination shown on the MOL bill of lading was Monroe, Louisiana, the goods were actually being delivered to Atoka, Oklahoma. A copy of that email and the Delivery Order is attached as Exhibit W (GLL App. 367-68).

RESPONSE: Admits that such a document appears to have been sent, but denies receipt of a Shipline Delivery Order by MOL operations is probative evidence that MOL received notice of “split routing” by GLL. *See* reply to PFFs 67, 69, 70 and 76.

86. Aurora, Illinois was a door point in the service contracts between MOL and Global Link but Itasca, Illinois was not. *See* Brian Pinkett Dec. at ¶ 14 (GLL App. 2).

RESPONSE: Admitted.

87. On November 19, 2005, Blake Shumate of Global Link sent a Shipline Delivery Order to MOL reflecting that, although the destination shown on the bill of lading was Aurora, Illinois, the goods were actually being delivered to Itasca, Illinois. A copy of the Delivery Order sent by Global Link to MOL is attached as Exhibit X (GLL App. 369).

RESPONSE: Admits that such a document appears to have been sent, but denies that receipt of a Shipline Delivery Order by MOL operations is probative evidence that MOL received notice of “split routing” by GLL. *See* reply to PFFs 67, 69, 70 and 76.

88. On March 2, 2007, Laci Bass wrote to Paul McClintock and Rebecca Yang, and cc'ed Ted Holt, in regard to Global Link cargo that was booked for Martinsville, Virginia but was actually going to Hancock, MD. A copy of that correspondence is attached as Exhibit Y (GLL App. 370). The shipment in question was a split routing. *See* Brian Pinkett Dec. at ¶ 15 (GLL App. 2).

RESPONSE: Admit that the document states the cargo was booked for Martinsville, VA, but is going to Hancock, MD. Deny that the document supports a finding that this was a “split routing” and further denies that Laci Bass had knowledge of the unlawful split routing scheme. Indeed, GLL went to great pains to keep the existence of its scheme a secret from MOL employees, including Laci Bass in particular. *See* Email from Jim Briles to Global Link staff dated August 15, 2005 (MOL Exh. AM) (MOL App. 1484).

89. Mr. McClintock testified that “just about everybody in the company [MOL] was copied on that [email exchange.]” McClintock Dep. at 167:22-168:1 (GLL App. 18). “There

were messages after messages flying all over about that overturned container.” Yang Dep. at 114:18-10 (GLL App. 47).

RESPONSE: Admit this was McClintock and Yang’s testimony, but otherwise deny the allegations of this proposed finding. Answering further, the document at issue generally pertained to overweight containers and a serious cargo misdescription, not split routing.

90. Again, Paul McClintock had a conversation with MOL’s General Counsel in regard to split routing but again no steps were taken by MOL to prevent split routing. *Id.* at 110:9-23, 116:8-117:16 (GLL App. 46, 47).

RESPONSE: Denied. *See* reply to PFF 42 and 43.

91. MOL took the deposition of Jason Denton, a representative of Spirit Trucking. Although, MOL introduced into evidence documents showing that in certain instances Global Link issued Shipline and Truckline Delivery Orders with different delivery addresses, no one from Global Link ever told Denton or anyone else from Spirit Trucking not to disclose to MOL where the goods were actually being delivered. *See* Jason Denton Dep. at 156:4-157:22, Exh. Z (GLL App. 373).

RESPONSE: Admit that deposition transcript speaks for itself, but except as specifically admitted, deny each and every remaining allegation contained in PFF 91. While Denton testified that he personally was not told not to inform MOL, that does not mean that others were not so advised. In fact, Denton testified that: (a) Spirit typically received both the Truckline and Shipline Delivery orders from GLL (Transcript of Deposition of Jason Denton dated October 5, 2011 at 47:20-48:8); (b) GLL sent the Truckline and Shipline Delivery Orders to Spirit before the TPO was sent by MOL to

Spirit (Denton Dep. at 64:18-65:11); (c) GLL was responsible for notifying MOL about any change in final destination (Denton Dep. at 47:16-48:4); and (d) Spirit was advised by GLL to follow the Truckline delivery order for the correct final destination information (Denton Dep. at 62:1-63:10). Moreover, there is other evidence that GLL sought to keep this a secret from MOL. (Briles Dep. at 125:20 and 134:3-17; MOL Exh. "U" (MOL App. at 1225-6); Rosenberg Declaration at ¶¶ 52-55 (CJR Exh. A) (CJR App. at 9); Briles Declaration at ¶¶ 27-28, 38-39, 44 (CJR Exh. B) (CJR App. at 16, 18-19, 20); and Latham Declaration at ¶ 5 (CJR Exh. C) (CJR App. at 29)). By GLL's own admission, the entire "split routing" scheme depended on GLL locating truckers who would cooperate by delivering containers to a destination different than the destination on the master bill of lading and the carrier's freight release. *See* Global Link Voluntary Disclosure (MOL Exh. C) at ¶¶ 10, 13 (MOL App. at 113-14 and 116) and Arbitration Partial Final Award (MOL Exh. A) (App. at 9).

92. If Global Link had not wanted MOL not to know where the goods actually were being delivered, they would have instructed Spirit Trucking not to disclose it to MOL. *Id.* at 156:4-158:5 (GLL App. 373-374).

RESPONSE: Denied. Spirit understood that it was to deliver the shipment to the destination on the Truckline delivery order, and not the destination on the Shipline delivery order, based on instructions from GLL (Denton Dep. at 63:19-64:17). GLL proffers a proposed finding of fact which is both argumentative and speculative. Jason Denton's testimony is not relevant or probative as to GLL's motivations in implementing its "split routing" scheme. *See* reply to PFF 91 and 93.

93. Spirit Trucking sent invoices to MOL showing the actual locations where the cargo was delivered. *Id.* at 151-165 (GLL App. 372-375).

RESPONSE: Deny that the referenced documents are invoices received by MOL. *See Declaration of Felicita Camacho* (MOL Exh. CT, MOL App. 2150-51). Further, deny that any trucker invoice represents notice to MOL as to the actual final destination of GLL shipments. GLL erroneously assumes that a trucker's invoice is examined by MOL accounting personnel for final destination information. Denton testified that he assumed GLL sent both the Shipline and Truckline Delivery Orders to MOL and that GLL would have notified MOL about the change in final destination (Denton Dep. at 47:10-48:13 and 49:9-15). Denton further assumed that GLL was being just as open with MOL as with Spirit (Denton Dep. at 108:2-109:1). *See* reply to PFF 91. Moreover, the practice of MOL accounting is to pay the trucker's invoice as long as the amount of the invoice and the container number match the amount and container number in the TPO which MOL has issued. Accounting personnel would not otherwise review or examine the invoice and would not seek to match the destination shown in the invoice against the destination in the TPO. *See Declaration of Felicita Camacho* (MOL Exh. CT)(MOL App. 2150-51).

94. Exhibit 7 to the Denton deposition, Global Link Exh. AA (GLL App. 378-383), reflects that, although a Shipline Delivery Order was sent to MOL showing a destination of Aurora, Illinois, Spirit Trucking billed MOL for delivery of the cargo to its actual destination in South Holland, Illinois. *See* Jason Denton Dep. at 152:1-153; Exh. Z (GLL App. 372); *see also* Brian Pinkett Dec. at ¶ 16, Exh. A (GLL App. 2).

RESPONSE: Deny that any trucker invoice represents notice to MOL as to the actual final destination of GLL shipments. *See* reply to PFFs 69, 70, 76 and 93.

95. Spirit Trucking billed MOL in the ordinary course pursuant to its normal billing procedures. Jason Denton Dep. at 154:4-10, Exh. Z (GLL App. 373).

RESPONSE: Unable to admit or deny what Spirit's normal billing practices were. See reply to PFF 91 and 93.

96. MOL was fully aware of where the goods were being delivered. *Id.* at 153:8-18 (GLL App. 372).

RESPONSE: Denied. See reply to PFFs 69, 70, 76, 91 and 93. James Denton, an employee of Spirit, was unaware that "split routing" was kept hidden from MOL (Denton Dep. at 108:2-109:1; MOL Exh. CG; MOL App. 1986).

97. Spirit Trucking similarly billed MOL for another shipment that was going to South Holland, Illinois, despite the fact that the Shipline Order reflected Aurora, Illinois. *See* Denton Deposition Exhibit 8, Global Link Exhibit BB (GLL App. 384-390); Jason Denton Dep. at 154:22-155:6 (GLL App. 373).

RESPONSE: The document (which does not appear to be an invoice, *see* Felicita Camacho Declaration (MOL Exh. CT)(MOL App. 2150-51) speaks for itself, and otherwise deny this is evidence of MOL's knowledge of split routing. See reply to PFFs 67, 70, 76, 91, 93 and 96.

98. Based upon Spirit Trucking's billing, MOL was fully aware of where the shipment was sent. *Id.* at 155:7-156:2 (GLL App. 373). There was no intention on the part of Spirit Trucking to deceive MOL into thinking the goods were being delivered to a location other than South Holland, Illinois. *Id.* at 156:4-21 (GLL App. 373).

RESPONSE: Denied. See reply to PFFs 67, 70, 76, 91, 93 and 96.

99. If Spirit Trucking had been seeking to deceive MOL as to where the goods were going, it would not have sent them invoices with the actual destination listed. *Id.* at 157:5-158:5 (GLL App. 373-374).

RESPONSE: Unable to admit or deny whether Spirit was trying to deceive MOL. See reply to PFFs 67, 69, 70, 76, 91, 93 and 96.

100. Exhibit 9 to the Denton deposition, Global Link Exh. CC (GLL App. 391-400), reflects an invoice showing that three different containers were delivered to South Holland, Illinois, despite Shipline Delivery Orders showing a destination of Aurora, Illinois. *See also* Jason Denton Dep. at 158:10-24 (GLL App. 374).

RESPONSE: Admit that the document speaks for itself, and deny that a trucker invoice sent to MOL accounting personnel for payment constitutes notice of the actual final destination for GLL shipments. See reply to PFFs 67, 69, 70, 76, 91, 93 and 96.

101. If Global Link and Spirit Trucking were conspiring to keep secret from MOL the actual location where the goods were being delivered, they were inept at it. *Id.* at 159:2-13 (GLL App. 374).

RESPONSE: Unable to admit or deny whether and what Spirit was seeking to keep secret from MOL. As previously noted, GLL collaborated with McClintock to keep “split routing” a secret from MOL. See reply to PFFs 11 and 15.

102. Exhibit 13 to the Deposition, Global Link Exhibit DD (GLL App. 401), reflects that although Global Link issued a Shipline Delivery Order to Kentlands, Indiana, Spirit Trucking billed for delivery to the actual location where the goods were delivered in Dubuque, Iowa. Jason Denton Dep. at 173:16-174:16, Exh. Z (GLL App. 376-377). MOL was therefore

on notice that the goods were delivered to Dubuque. *Id.* at 174:13-16 (GLL App. 377); *see also* Pinkett Dec. at ¶ 17 (GLL App. 2).

RESPONSE: Admit that the document speaks for itself. Answering further, there is no evidence to support that the referenced Shipline document was sent to and received by MOL. Furthermore, deny that any Shipline Delivery Order is evidence that MOL was on notice of “split routing” by GLL. *See* MOL Exh. BV (001705-07), Exh. BW (001749, 51, 53, 55), Exh. BX (001785, 88, 90, 93) and Exh. BY (001834, 39, 44, 51-52). *See also* responses to PFF 67, 69, 70, 76, 91, 93 and 96. It also should be noted that Dubuque, Iowa was a door point in GLL’s service contracts with MOL.

103. Similarly, Exhibit 21 to the Deposition, Global Link Exh. EE (GLL App. 409-410), shows that, although a Global Link Delivery Order showed Kentlands, Indiana, Spirit Trucking billed MOL for delivery to its actual destination in Noblesville, Indiana. *See* Jason Denton Dep. at 174:18-176:24 (GLL App. 377); *see also* Brian Pinkett Dec. at ¶18 (GLL App. 3).

RESPONSE: Admit that the document speaks for itself. Deny that there is any evidence to show the document was sent to MOL. Furthermore, deny that any Shipline Delivery Order is evidence that MOL was on notice of “split routing” by GLL. *See* response to PFFs 69, 70 and 76.

104. Despite being on notice that the goods were delivered to Noblesville, MOL never objected to the goods being delivered to a location different than what was reflected on the bill of lading. *Id.*

RESPONSE: Deny MOL was on notice and therefore deny the allegations of PFF 104.

105. In numerous other instances, *see e.g.*, Jason Denton Deposition Exhibits 3, 11, and 12, Global Link Exhs. FF, GG, and HH (GLL App. 411-420; 421-428; 429-435), Spirit Trucking issued invoices to MOL for delivery of cargo to locations not reflected on MOL's bill of lading. Jason Denton Dep. at 159:2-163:14, Exh. Z (GLL App. 374-375).

RESPONSE: Deny that the referenced documents are invoices received by MOL. Further deny that MOL received notice of "split routing" on the part of GLL. See reply to PFFs 67, 69, 70, 76, 91, 93 and 96.

106. MOL never objected to Spirit Trucking billing to destinations different than what was indicated on its bill of lading. Jason Denton Dep. at 162:9-15 (GLL App. 375).

RESPONSE: Deny that MOL received notice of "split routing" on the part of GLL and therefore deny the allegations of PFF 106. See reply to PFFs 67, 69, 70, 76, 77, 79, 91, 93 and 96.

107. In June of 2006, Global Link was acquired by its current owner, Golden Gate Logistics, LLC ("Golden Gate"). *See* August 1, 2011 Commission Order, Docket No. 09-01 (91) at 33 n.4; *see also* John Williford Dec. at ¶ 2, February 21, 2013, attached as Exh. II (GLL App. 436). After Golden Gate acquired the company, a former employee made a complaint alleging questionable routing practices. *Id.* at ¶ 4., Exh. II (GLL App. 436).

RESPONSE: Admitted.

108. As a result, Golden Gate asked Gary Meyer, the President of Global Link, and James Briles, Global Link's Vice President of Transportation, to investigate the issue. *Id.* at ¶ 5 (GLL App. 436).

RESPONSE: Admitted.

109. Initially, the allegations of questionable routing practices were not viewed as significant. *Id.* at ¶ 6 (GLL App. 436). Global Link was unable to quantify the extent of the split routing practice until early 2007. Arbitration Award at 15, Exh. G. (GLL App. 76). Over the course of time, however, Global Link learned of the seriousness of the split routing practices at issue and the fact that they constituted violations of Federal Maritime Commission regulations. Williford Dec. at ¶ 6, Exh. II (GLL App. 436).

RESPONSE: Admitted. As the Partial Final Award (MOL Exh. A) points out, the Olympus and CJR Respondents successfully concealed exactly why GLL's profit margin was higher in comparison to other NVOCCs (*see also* Transcript of Deposition of Edward Feitzinger dated July 15, 2008 at 29:16-22 and 49:5-50:4 (MOL Exh. CH: MOL App. 1991 and 1993-94). The Olympus and CJR Respondents successfully kept hidden their "split routing" scheme from the new owners of GLL until after the transaction closed. It is not entirely clear whether the new owners of GLL would have eventually discovered the "split routing" scheme if not for the email from Eileen Cakmur to John Williford dated July 16, 2006 (MOL Exh. Q, MOL App. 1206) (*see also* Feitzinger Dep. at 16:4-24; MOL Exh. CH; MOL App. 1990). By GLL's own admission, even after being notified by Ms. Cakmur, the new owners of GLL took the unusual position that "split routing" was not pervasive in the company. Even so, GLL waited until May 21, 2008 to submit its Voluntary Disclosure to the FMC (MOL Exh. C, MOL App. 108). If the new owners of GLL could not understand and appreciate its own "split routing" operation—despite complete and unfettered access to its own internal employees and records—it is hypocritical for Respondents to argue MOL should have discovered "split routing" sooner when GLL was hiding it from MOL

by deliberately mis-booking shipments and regularly issuing false transportation documents .

110. Most of the contracts being used belonged to the Hecny Group, a Hong Kong-based logistics company, and Global Link could not amend them. *Id.* at ¶ 7 (GLL App. 436). Further, service contracts between carriers and NVOCCs run from May 1st to April 30th and Gary Meyer, and Jim Briles, who negotiated Global Link's contracts, stated it would be impossible to accomplish these significant amendments to the contracts in mid-term. *Id.* Ultimately, after consulting with its then legal counsel, it was determined that Global Link would negotiate new service contracts in the May, 2007 negotiating season, which would eliminate any incentive to engage in split routing in the future. *Id.*

RESPONSE: Deny that contracts with Hecny are involved in the shipments with MOL at issue herein; GLL negotiated and signed its own service contracts with MOL and was free to seek amendments. In fact, those contracts were amended. GLL never disclosed the existence of its "split routing" scheme to MOL, or revealed its continuing violation of FMC regulations until the submission of its May 21, 2008 Voluntary Disclosure to the FMC (MOL Exh. C; MOL App. 108). At all relevant times, GLL had exclusive control over the booking of shipments to false final destinations, the drafting of false transportation documentation, and the issuance of these false transportation documents to ocean carriers such as MOL. MOL never initiated these false bookings. GLL was never compelled to continue to engage its "split routing" scheme, and always had the option to voluntarily discontinue its fraudulent booking practices at any time. GLL continued with its "split routing" scheme because it earned more money by violating the Shipping Act.

Except as specifically admitted, MOL denies the remaining allegations in PFF 110.

111. MOL is one of the steamship lines with which Global Link had service contracts. *Id.* at ¶ 8 (GLL App. 437).

RESPONSE: Admitted.

112. Christine Callahan was hired by Global Link and instructed to ensure that it complied with FMC regulations and to put an end to Global Link's split routing practices. *Id.* at ¶ 9 (GLL App. 437).

RESPONSE: Admit that Christine Callahan was hired by GLL. MOL has no knowledge with regard to what instructions she was given and is unable to admit or deny the remaining allegations.

113. Global Link informed MOL that the split routing practices needed to be terminated. *Id.* at ¶ 10 (GLL App. 437).

RESPONSE: Admit that GLL communicated with Paul McClintock about using a different contract structure (CY rates), but deny that MOL was informed about split routing practices or any discontinuation of such practices until the summer of 2008 when GLL sent a subpoena to the Atlanta office of MOL (Hartmann Dec. at ¶ 16 (MOL Exh. BM) (App. 1632).

114. Global Link's current owners, Golden Gate, took every reasonable step to terminate split routing with MOL in a timely fashion. *Id.* at ¶ 11 (GLL App. 437).

RESPONSE: Denied. GLL continued its "split routing" scheme until the middle of 2007 (MOL Exh. C, MOL App. 108).

115. Golden Gate suffered significant losses as a result of the actions of the prior owners of Global Link and of MOL in encouraging and engaging in split routing. *Id.* at ¶ 12 (GLL App. 437).

RESPONSE: Deny MOL encouraged or engaged in split routing. The assertion by the current owners of GLL that they suffered significant losses due to split routing (presumably due to payment of an inflated purchase price) is an admission that GLL's conduct was profitable to GLL and harmful to MOL (Feitzinger Dep. at 210:6-211:19 (split routing is "cheating"); MOL Exh. CH; MOL App. 1997-98).

116. When, early in the year 2007, Christine Callahan was hired by Global Link as the new Chief Operations Officer, she was instructed to ensure that Global Link complied with FMC regulations and to put an end to Global Link's split routing practices. Christine Callahan Dec. at ¶ 4, January 29, 2013, attached as Exh. JJ (GLL App. 438)

RESPONSE: MOL can neither admit nor deny the allegations contained in PFF 116.

117. Soon after her arrival at Global Link, Ms. Callahan entered into negotiations with steamship lines in regard to service contracts for the upcoming year (May 1st to April 30th). Christine Callahan Dec. at ¶ 5 (GLL App. 438). One of the steamship lines with which she negotiated with was MOL. *Id.*

RESPONSE: MOL admits Ms. Callahan negotiated with MOL and is unable to admit or deny the remaining allegations.

118. Ms. Callahan's primary contact at MOL for these negotiations was Paul McClintock. *Id.* at ¶ 6 (GLL App. 438).

RESPONSE: Admitted.

119. Paul McClintock was the Vice President/General Manager of the Southeastern Region of the United States for MOL. He was Global Link's primary contact because of Global

Link's location in that region of the country. MOL handled a large number of shipments to the United States for Global Link. *Id.* at ¶ 7 (GLL App. 438).

RESPONSE: Admitted.

120. Pursuant to instruction from Ms. Callahan, in March of 2007, Jim Briles of Global Link informed MOL that Global Link wanted to change its service contract from having only a limited number of door points to adding more door points and using container yard (CY) and port rates. *See* Jim Briles Dep. at 129:7-22, Exh. E (GLL App. 54).

RESPONSE: Deny that anyone at MOL, other than Paul McClintock and Rebecca Yang, was informed in 2007 that GLL wanted to begin using CY and port rates. Deny that the service contract had only a limited number of door points, and is unable to admit or deny the remaining allegations. *See also* reply to PFF's 10-16.

121. Subsequently, Paul McClintock and Rebecca Yang of MOL came to Global Link's offices to discuss the new contract and Global Link's desire to get away from the split routing practices, which involved only a handful of door points. *Id.* at 128:5-129:19 (GLL App. 54).

RESPONSE: Unable to admit or deny if Yang or McClintock came to GLL's office or what they discussed and deny that any of GLL's service contracts with MOL involved a handful of door points. *See* MOL Exh. BV-BZ; *see also* response to PFF 120.

122. MOL told Global Link it would not cease split routing because it was too time-consuming to negotiate individual delivery points. *Id.* Jim Briles further testified that when he requested that a different door point be added to the MOL-Global Link service contract for a particular shipment, Rebecca Yang, through McClintock, requested that Global Link instead move the shipment as a split. *Id.* at 124:20-125:9 (GLL App. 53).

RESPONSE: Deny the first sentence of PFF 122. Paul McClintock testified that in conversation with GLL, particularly Christine Callahan, in the spring of 2007 he indicated that negotiating and adding CY rates to the GLL service contracts would be difficult to do at that time because of the press of business during the contract season. No one at MOL other than McClintock and Yang had any knowledge that GLL wanted to use CY or port rates. *See* Exhs. 24 and 25 marked at Depositions of Paul McClintock and Rebecca Yang (MOL Exh. CQ and CR; MOL App. 2074-76). Any hesitancy on the part of McClintock and Yang to approach trade management to modify the rate structure of the GLL contracts was clearly due to their desire to keep the knowledge of any prior split routing activity a secret from MOL management. Edward Feitzinger, Senior Vice President of Golden Gate Logistics, testified that GLL knew that McClintock was colluding with them to cheat MOL and that this had to be kept a secret from everyone else at MOL.

In particular, Mr. Feitzinger testified as follows:

Q. Did you ever ask anyone why Mitsui was willing to engage in split shipments if split shipments were not proper?

A. Yes.

Q. Who did you ask?

A. I – somebody on the Global Link management team.

. . . .

A. And so we had dialogues with the team, saying, you know, what is MOL's -- does MOL, you know, know ["split routing"] is going on and -- you know, and the answer that was given, I couldn't tell you whether it was Jim [Briles] or Gary [Meyer], again, that was two of the likely suspects, was that we had helped make Paul [McClintock] a success in MOL and that because Paul had been successful and, you know, it was -- this was something that was sort of kept on the quiet and that Paul [McClintock] -- that the people [at MOL] in Oakland who were[with] MOL Americas didn't know about ["split routing"] and that we at Golden Gate shouldn't talk to MOL.

It was a big discourse, because we were right next to MOL here, and we thought it would be good to develop a relationship with them since we're 15 minutes away. And Jim [Briles] was just adamant that we not develop a relationship with [MOL in] Oakland.

Feitzinger Dep. at 205:10-206:23 (MOL Exh CH; MOL App. 1995-96).

Mr. Feitzinger further described the relationship between McClintock and GLL as follows:

- Q. Are split shipments, in your view – as a business person engaged in the logistics business – or at least had been engaged in the logistics business, is it a fraud on ocean carriers?
- A. So I would say – I would not use that word.
- Q. Okay.
- A. . . . Again, I'm shying away from the word "fraud" because I'm not comfortable with this bigger meaning, and I don't mean to be evasive. I'm just saying I don't -- that we were cheating -- we were cheating Maersk, I would use the word "cheating," because I'm more comfortable with that, and we were certainly doing things that I don't think the Oakland office or the Singapore office of MOL would think would be appropriate in a sense, and that if they were to know about ["split routing"] at that point, I think that they would have not looked kindly on [Paul McClintock] who was in the -- you know, in my opinion, in collusion with Jim [Briles] on [hiding "split routing" from MOL].

Feitzinger Dep. at 210:6-211:5 (MOL Exh. CH; MOL App. 1997-98).

It also was clear to Mr. Feitzinger that even though his company had excellent MOL management contacts above Paul McClintock's level, it was understood that no one at GLL was supposed to ever discuss "split routing" with anyone at MOL. Mr. Feitzinger testified as follows:

- Q. Were you lying at Global Link to ocean carriers when you did split shipments up until 2007?
- A. We weren't telling them the truth about where the product was going.
- Q. Well, were you lying to them?

A. We were -- we were giving them a false address. We talked about that before.

Q. Knowingly, right? In other words, you were knowingly telling a falsehood, right?

A. Yes.

Q. Did you ever consider telling the ocean carriers that through the summer of 2007 you were lying to them?

....

A. We considered telling the ocean carriers, yes. We considered that.

....

Q. Is there a writing in which you considered doing that or is there a writing that discusses your consideration of doing that?

A. I'm not sure.

Q. You're not sure.

Do you --

A. I --

Q. -- recall ever seeing such a writing?

A. No.

....

So those discussions, if we were all in the office together, would always occur verbally, and those discussions occurred because I know that was one of -- if you looked at scenarios that we planned out about once this problem emerged what do we do about it, one of the things was do we go to Maersk right now or do we go to MOL right now, not at Paul McClintock level, but at the Oakland or at the -- Antonio had a very good relation -- Antonio Leung, L-e-u-n-g, had a very good relationship with one of the high-level people in Singapore in MOL and was it more appropriate to go there and explain what was going on, so ...

Feitzinger Dep. at 214:8-215:23 (MOL Exh. CH; MOL App. 1999-2000).

The reason GLL did not advise MOL about “split routing” was that GLL knew that MOL would have immediately ceased doing business with GLL.

Feitzinger explained as follows:

Q. Was there a reason why [Global Link] chose not to take advantage of [its close] relationship in order to inform MOL about split shipments?

A. So Jim [Briles] was adamant that if we went to [MOL in] Oakland that it would ruin [Global Link’s] relationship with MOL and that it would – or Singapore, because Singapore is above Oakland in their hierarchy, and that that would mean the end of all of [Global Link’s] work with MOL, which, considering that Maersk was disappearing, was a critical component of our purchasing strategy.

Feitzinger Dep. at 218:8-17 (MOL Exh CH; MOL App. 2001).

In summary, Feitzinger testified that Paul McClintock colluded with GLL to keep “split routing” a secret from the rest of MOL. McClintock’s actions benefited GLL and McClintock personally, not MOL.

123. Hessel Verhage, the President of Global Link, and Christine Callahan had lunch with Paul McClintock and Rebecca Yang of MOL in which it was explained that Global Link could no longer engage in split routing with MOL. *See* Hessel Verhage Dec. at ¶ 4, January 24, 2013, attached as Exhibit KK (GLL App. 443). At that lunch, Ms. Yang and Mr. McClintock expressed disappointment that Global Link was no longer willing to do split routing. *Id.*

RESPONSE: Unable to admit or deny whether the lunch took place or, if there was such a lunch, what was said.

124. In June of 2007, when MOL still had not provided the information for the new contract necessary to eliminate the split routings, Christine Callahan wrote McClintock that Global Link could not continue to use the existing methodology in the contract and the parties needed to get the CY rates in place as quickly as possible. *See* June 5, 2007 email

correspondence from Christine Callahan to Paul McClintock, attached as Exhibit JJ-1 (GLL App. 441-442).

RESPONSE: Admit Callahan wrote the email, but deny that this communication put MOL on notice of “split routing.” See response to PFF 122.

125. When almost three weeks later, MOL still had not responded, Ms. Callahan wrote again:

“Although you explained to us the challenges you have internally at MOL regarding the change in methodology to CY moves vs. *the split door service MOL has historically provided*, we haven’t been advised of any change.

We’ve waited as long as we possibly can. Therefore, I have advised both Jim and Molly that *we must discontinue supporting MOL on the split moves* as we do not have MOL CY rates in place that will allow us to arrange our own trucking. This instruction has been given with immediate effect.”

See June 20, 2007 email from Christine Callahan to Paul McClintock, Exh. JJ-1 (GLL App. 441) (emphasis supplied).

RESPONSE: Admit Callahan wrote the email, but deny that this communication put MOL on notice of “split routing.” See response to PFF 122.

126. Although Paul McClintock suggested in his deposition testimony that he did not know what was meant by the term “split door service,” at no point did he ever ask Ms. Callahan what was meant by the term or indicate any uncertainty as to its meaning. See Christine Callahan Dec. at ¶ 13, Exh. JJ (GLL App. 439).

RESPONSE: Admit McClintock colluded with GLL to keep “split routing” a secret from MOL and that McClintock’s refusal to acknowledge the existence of “split routing” in his deposition is further evidence that he knew the practice was wrong and unauthorized by MOL. See response to PFF 122.

127. On July 17 and 18, 2007, Rebecca Yang of MOL and Jim Briles of Global Link corresponded in regard to the shipment of cargo to Bentonville, Arkansas. *See* email attached as Exhibit LL (GLL App. 444-445). In the correspondence, despite having been told on numerous occasions that Global Link was no longer willing to engage in split routing and knowing that Global Link's customer was bringing its containers into Bentonville, Arkansas, Rebecca Yang suggested a split routing whereby Global Link would use the Fort Smith, Arkansas rate rather than the Bentonville, Arkansas rate because Bentonville rates were higher. *Id.*

RESPONSE: Admit that the email speaks for itself, but deny that the communication is evidence that MOL was on notice of "split routing." *See* response to PFF 122.

128. Jim Briles responded that Global Link could no longer engage in split routing, *i.e.*, "cannot use alternative doors." *Id.* Rebecca Yang's response of "SIGH" reflected MOL's disappointment that Global Link was no longer willing to engage in split routing. *Id.*

RESPONSE: Admit that the response of "SIGH" reflected Yang's disappointment, but deny this communication represented written notice to MOL of the existence of "split routing" or that MOL was aware of Yang's collaboration with GLL about "split routing." *See* response to PFF 122.

129. On July 26, 2007, less than ten days later, MOL again corresponded with Global Link in regard to a split routing proposal in which goods would move under a Monroe, Louisiana door rate but actually go to Winnsboro, Louisiana with MOL contributing the extra trucking costs from the service contract points to the actual destinations. In response, a clearly exasperated Global Link states "Why is MOL accepting these if not in the contract?????" *See* July 26, 2007 correspondence attached as Exhibit MM (GLL App. 446). In this instance, Paul

McClintock had increased the fuel allowance for truckers so as to make the split routing more enticing. “So now Paul increased the fuel allowance for Monroe to \$200 from \$125.” Once again, however, Jim Briles informed Rebecca Yang and Lauren Estrada of MOL that “for vineyard to Winnsboro, la – I cannot book there anymore since we have Monroe LA door and you know the whole situation.” *Id.* See also FoF Nos. 57-59

RESPONSE: Admit that this correspondence speaks for itself, but deny MOL had knowledge of Yang and McClintock’s efforts to allow “split routing”, or any refusal to negotiate new service contracts based on CY or port rates. See response to PFF 122.

130. In her deposition, Rebecca Yang confirmed that this correspondence reflected Global Link’s refusal to engage in split routing by shipping goods to Vineyard Furniture in Winnsboro because Global Link did not have a door point for Winnsboro in its service contract with MOL. Yang Dep. at 126:15-127:22, Exh. D (GLL App. 49).

RESPONSE: Denied. Rebecca Yang repeatedly denied any knowledge of split routing, both in interviews conducted by MOL’s general counsel and in her deposition on October 4, 2011 (Yang Dep. at 14:4-11; 29:10-30:9 and 208:21-209:1). The testimony cited in PFF 130 is evidence that Ms. Yang was not being truthful and conspired with GLL personnel to allow a practice to be conducted which she knew was not permitted by MOL, and to cover up this practice after it had ended. GLL knew that the knowledge of the split routing scheme could not go beyond Yang and McClintock because if it was discovered by others in MOL it would not be permitted and MOL would stop doing business with GLL. See reply to PFF 122.

131. Despite Global Link’s continued insistence that it would not engage in split routing, MOL’s resistance to moving away from split routing was so entrenched that months

after Global Link had told MOL that it refused to engage in split routing, on August 6, 2007, Jim Briles wrote to Rebecca Yang and Paul McClintock requesting a meeting about getting Global Link's rates changed to CY rates because "we have not had any movement on this as of yet." *See* August 6, 2007 email attached as Exhibit NN (GLL App. 447). Thus, even five months after Global Link had informed MOL that it could not continue with split routing, MOL still had not taken the steps necessary to discontinue split routing. *See* FoF 111 and FoF 121.

RESPONSE: Admit McClintock and Yang colluded with GLL to keep "split routing" a secret from the rest of MOL and that they failed to properly advise MOL about their dealings with GLL, including not advising MOL of GLL's request to modify its service contract to use CY points. *See* reply to PFFs 10, 11, 12, 23, 36, 54, 122, and 130.

132. Ultimately, MOL did provide Global Link with CY rates but Global Link's business with MOL was reduced as compared to the volume of business it did with them when the parties were engaging in split routing. *See* Christine Callahan Dec, at ¶ 12, Exh. JJ (GLL App. 439).

RESPONSE: Admitted. *See* response to PFF 122. This is further evidence that split routing was profitable to GLL and a detriment to MOL.

133. Recognizing that MOL's knowledge of split routing was of fundamental significance in this case, the Respondents' served discovery on MOL seeking information tending to establish MOL's knowledge of split routing—not only by Global Link, but by other MOL shippers as well. Specifically, Global Link sought all information reflecting MOL's knowledge of split routing. *See* Global Link Document Request No. 4, attached as Exhibit OO (GLL App. 457).

RESPONSE: Admit that GLL sought discovery, but otherwise deny the allegations of PFF 133.

134. Although MOL purported to produce responsive documents, it failed to produce any documents reflecting split routing involving Nintendo. Indeed, Global Link was unaware of the existence of such practices with Nintendo until it took the deposition of Paul McClintock, MOL's former Vice-President. *See* Global Link Response to October 20, 2011 Order Requiring Showing of Relevance and Reasonable Scope, attached as Exhibit PP (GLL App. 461).

RESPONSE: Denied. MOL did not engage in "split routing" with respect to Nintendo shipments. See Complainant's Response to the ALJ's April 12, 2012 Order on Pending Motions dated May 11, 2012 (GLL App. 470-86) and Declaration of Solange Young dated May 11, 2012 (GLL App. 487-89).

135. As the Vice President/General Manager for the Southeastern Region of the United States, the regional sales, customer services and operations personnel at MOL all reported to him. Paul McClintock Dep. at 32:1-4, 33:1-11, 37:11, Exh. C. (GLL App. 11, 12).

RESPONSE: Admit.

136. Subsequently, in 2007, Mr. McClintock assumed responsibility for MOL sales throughout the entire United States. *Id.* at 37:12-15 (GLL App. 12).

RESPONSE: Admit he assumed this responsibility in 2008. MOL was unaware of McClintock's role in split routing when it promoted him. See reply to PFFs 10-16.

137. Although Nintendo had only one door point in its contract, which would be shown as the destination on all of MOL's bills of lading, MOL's practice was to actually deliver Nintendo's goods to locations different than the point in the service contract, and the bills of lading. *Id.* at 205:19-206:13 (GLL App. 22-23). Deliveries to such locations were contrary to

the terms of the service contract and constituted split routings. *Id.* at 310:21-312:8 (GLL App. 29); *see also* Rebecca Yang Dep. at 19:10-20:4, Exh. D (GLL App. 32) (delivery orders were saying something different than what was reflected on the bill of lading and operations staff never questioned it.)

RESPONSE: Object to this proposed finding on the basis of relevance in that the ALJ has already held that “the existence or non-existence of the assumed Mitsui/Nintendo “standard operating procedure” does not have a tendency to make it more probably or less probably that Global Link engaged in this practice as alleged in Mitsui’s Amended Complaint” ALJ’s April 12, 2012 Memorandum and Order on Pending Motions at 8. To the extent MOL is obligated to respond to this proposed finding, it is denied. MOL did not engage in “split routing” with respect to Nintendo shipments. As explained in Complainant’s Response to the ALJ’s April 12, 2012 Order on Pending Motions dated May 11, 2012 (GLL App. 470-86), MOL

did not have a practice with [Nintendo] pursuant to which [Nintendo] shipments were diverted from the destination stated in the Mitsui bill of lading to another destination. Our investigation indicates that MOL’s bills of lading and transportation delivery orders matched as to final destination in virtually every instance and that MOL employees did not correspond or communicate with [Nintendo] employees or their designated truckers about alternative or changed destinations. In other words, contrary to the testimony of Paul McClintock [or Rebecca Yang], MOL employees did not devote their time and resources to “divert” [Nintendo] shipments; nor did [Nintendo] employees inquire or ask MOL’s assistance in arranging for a different or alternative destination. MOL did not employ a practice by which [Nintendo] shipments were unlawfully diverted to a destination which differed from either MOL’s bill of lading or MOL’s transportation delivery order. MOL did not and does not have a policy or practice of waiving diversion charges or not rerating shipments to new destinations for [Nintendo] or any other any shipper.

GLL App. at 471.

Paul McClintock's and Rebecca Yang's testimony concerning Nintendo lacks probative value in that they lack personal knowledge concerning the actions taken by MOL's Seattle office concerning the Nintendo account. The testimony of MOL employees from the Seattle office with personal knowledge confirm that MOL did not engage in "split routing" with respect to the Nintendo account. *See* Declaration of Solange Young dated May 11, 2012 (GLL App. 487-89) (MOL Exh. CM; MOL App. 2060-62); Declaration of Lyn Syms dated May 11, 2012 (MOL Exh. CN; MOL App. 2065-67) and Declaration of Roderick Wagoner dated May 11, 2012 (MOL Exh. CO; MOL App. 2068-70). Ms. Young testified that not only did she not communicate with Nintendo about unauthorized diversions, but at no time did anyone at MOL instruct truckers to delivery Nintendo shipments to locations other than the destination on the MOL TPO. Solange Dec. at ¶ 5 (MOL App. 2061-62). Ms. Syms testified that she was involved in the day-to-day communications with MOL's customers, including coordinating the release and delivery of Nintendo containers, and again at no time did anyone at MOL instruct truckers to deliver Nintendo containers to locations which differed from MOL TPOs. Syms Dec. at ¶¶ 3 and 5 (MOL App. 2066-67). Mr. Wagoner testified that he was the Regional Sales Manager for MOL's office in Seattle, which included the handling of the Nintendo account, and specifically disputed McClintock's testimony in that none of the MOL Sales personnel ever performed operations-type functions, and certainly did not arrange for the actual door deliveries. Wagoner Dec. at ¶¶ 2 and 7 (MOL App. 2069-70).

138. The primary function of three MOL employees was to deliver goods to sites different than what was reflected in the Nintendo service contract and presumably different than the location reflected in MOL's bills of lading. Paul McClintock Dep. at 210:1-19, Exh. C (GLL

App. 24). It was “*standard operating procedure*” for MOL to engage in split routing on behalf of Nintendo. *Id.* at 214:13-20 (GLL App. 25) (emphasis supplied).

RESPONSE: Denied. To the extent GLL is relying upon the testimony of Mr. McClintock concerning Nintendo, such testimony lacks probative value in that he lacks personal knowledge and is contradicted by three MOL employees who have personal knowledge of MOL’s handling of the Nintendo account. *See response to PFF 137.*

139. Although Mr. McClintock professed that he personally had been unaware that MOL had been engaging in split routing on behalf of Nintendo for an extended period of time, he admitted that after he confirmed that it was MOL’s standard operating procedure with Nintendo, MOL did not seek to re-rate the shipments or seek diversion fees from Nintendo. *Id.* at 208:13-18 (GLL App. 23). Thus, despite the fact that split routing was a common practice between MOL and Nintendo, MOL chose not to take any action against Nintendo. *Id.* at 208:19-209:9 (GLL App. 23).

RESPONSE: Denied. *See response to PFF 137.*

140. Due to MOL’s failure to produce documents reflecting split routing with Nintendo, Global Link sought to subpoena such records from Nintendo. Ultimately, the ALJ did not require Nintendo to produce such documents, but in his April 12, 2012 Order, directed MOL to describe in detail its practices with Nintendo pursuant to which Nintendo shipments were diverted from the destination stated on the MOL bill of lading to different delivery points and to state whether MOL had a policy or practice of waiving diversion charges and/or not rerating shipments to new destinations for any of its large shippers. *See April 12, 2012 Commission Memorandum and Order on Pending Motions Docket No. 09-01 (151) at 4.* The Order also

directed MOL to include copies of shipping documents from representative diverted Nintendo shipments.

RESPONSE: *See reply to PFF 137. Admit that the ALJ required MOL to provide certain information in an Order dated April 12, 2012. MOL complied with that Order. Except as specifically admitted, denies each and every remaining allegation contained in PFF 140.*

141. On May 11, 2012, MOL submitted its response to the ALJ's Order. Although MOL's Response baldly stated that Nintendo and MOL did not engage in the diversion of goods from the location stated in MOL's bills of lading, MOL's summary of the shipment documentation states that, "according to NOA" (i.e., Nintendo of America) 82% (98 of 119) of the containers in those shipments were diverted from the delivery site listed on MOL's Transportation Order and on the bill of lading. *See* pages 4-6 of MOL Response, attached as Exhibit QQ (GLL App. 473-475).

RESPONSE: *Denied. See reply to PFF 137. MOL never allowed or engaged in the "diversion" or "split routing" of Nintendo shipments. GLL continues to rely upon the testimony of McClintock and Yang, individuals who lack personal knowledge and whose credibility has been questioned by both Complainant and Respondents, and deliberately mischaracterizes the testimony of MOL employees who have personal knowledge and consistently confirm that MOL never had a practice by which Nintendo was allowed to unlawfully divert shipments. Id.*

142. The sample shipping documents accompanying MOL's submission showed that every MOL bill of lading indicated that the goods were to be delivered to a North Bend,

Washington door point. *See* MOL bills of lading attached as exhibits to MOL submission, attached as Exhibit RR (GLL App. 477-486).

RESPONSE: Denied. *See* reply to PFF 137 and 141.

143. The Declaration of Solange Young, which was attached to MOL's Response, confirmed that Nintendo provided weekly delivery schedules to MOL. *See* Solange Young Dec. at ¶ 3, Exh. SS (GLL App. 488).

RESPONSE: Admitted. *See* reply to PFF 137.

144. The sample delivery schedule that was attached as Exhibit A to Ms. Young's Declaration revealed, however, that instead of all of the goods going to North Bend, Washington, most were in fact delivered to Redmond, Washington, or to Yakima, Washington. The sample delivery schedule is attached as Exhibit TT (GLL App. 490). Thus, the goods were being diverted to locations different than those shown on MOL's bills of lading and its Transportation Orders to the motor carriers performing the deliveries.

RESPONSE: *See* reply to PFF 137. Admit that the information provided by Nintendo speaks for itself, but deny MOL engaged in illegal diversion, or any "split routing" scheme, or the waiver of diversion fees. *See* Complainant's Response to the ALJ's April 12, 2012 Order on Pending Motions dated May 11, 2012 (GLL App. 470-86); Declaration of Solange Young dated May 11, 2012 (GLL App. 487-89) (MOL App. 2060-62); Declaration of Lyn Syms dated May 11, 2012 (MOL App. 2065-67); Declaration of Roderick Wagoner dated May 11, 2012 (MOL App. 2068-70) and Declaration of Warrin Minck dated May 11, 2012 (MOL App. 2071-73). *See also* reply to PFF 137 and 141.

145. MOL's summary of the sample shipment documents it produced further confirms that although every MOL bill of lading showed the goods were to be delivered to a North Bend,

Washington door point, 34 of 119 containers were delivered to contractors at unspecified locations. *See* Exhibit QQ at pages 4-6 (GLL App. 473-475). In addition, another 59 out of 119 were diverted to Redmond, Washington, instead of to North Bend. Nonetheless, MOL did not seek to re-rate the ocean freight rates to the new destinations. MOL Response to ALJ Question No. 5, Exh. QQ (GLL App. 472). MOL also asserts that diversion charges should not be assessed unless the shipper requested such a diversion, and that ocean freight charges do not have to be re-rated if the location where goods are diverted is not far from the location reflected in the bill of lading, *e.g.*, from North Bend, Washington to over 110 miles away in Yakima, Washington. MOL stated that if it had known that the goods were being diverted to new destinations, it “likely” would not have re-rated the ocean freight charges because the locations where the goods were being diverted were near the locations listed in the bills of lading. *See* MOL Response to ALJ Question No. 4, Exh. QQ (GLL App. 472).

RESPONSE: As explained in Complainant’s Response to the ALJ’s April 12, 2013 Order on Pending Motions (GLL App. 470-86), Nintendo

requested that MOL use [Nintendo’s] preferred truckers for the local drayage and MOL complied with this request. MOL in turn negotiated its standard trucking rates with NOA’s preferred truckers. As far as MOL was concerned, the trucker delivered the shipment to the destination set forth on MOL bills of lading and transportation orders—there was never any request or instruction from MOL to alter the final destination. If there was any change in final destination, those instructions were exchanged between NOA and the trucker, without any involvement of MOL. As indicated in the declaration of Solange Young, NOA sent copies of container delivery schedules to MOL. These schedules appear to contain locations, apparently for NOA’s benefit. As indicated by the attached declarations and transportation documents, the selection and routing to these locations were handled by NOA, without any involvement by MOL.

GLL App. at 471-72.

Except as specifically admitted, MOL denies each and every remaining allegation contained in PFF 145. *See also* reply to PFF 137.

146. On June 27, 2012, MOL filed suit against Evans Delivery Company, Inc. and numerous other truckers, in Superior Court in New Jersey, alleging that they engaged in fraud by issuing fraudulent invoices in regard to split routing practices in the time period from January of 2004 until December 2007. *See* Complaint at ¶ 33, attached as Exhibit UU (GLL App. 498).

RESPONSE: Admit that the document speaks for itself, but deny that this lawsuit has any relevance to the proceeding before the Commission.

147. MOL asserts that it did not learn of the allegedly fraudulent practices until February of 2011, *Id.* at ¶¶ 38, 56, 74, 110, 128, 164, 182, 218 (GLL App. 498-529), almost two years after the Complaint in this proceeding was filed with the Commission. *Id.*

RESPONSE: Admit that the document speaks for itself, but deny that this lawsuit has any relevance to the proceeding before the Commission.

148. One of the truckers named as a defendant in that action is All Coast Intermodal Service, Inc. *Id.* All Coast is the same trucker that MOL informed Global Link that it wanted used out of Savannah, Georgia for shipments booked to Lenoir, N.C in 2004. *See* Global Link's Proposed Findings of Fact at ¶ 33.

RESPONSE: Admit All Coast is named as a defendant in the Complaint, but except as specifically admitted, MOL can neither admit nor deny the remaining allegations contained in PFF 148. Deny PFF 148 has any relevance to the proceeding before the Commission. To the extent GLL intends to rely on PFF 148 to show MOL was on notice of "split routing", MOL denies any such allegation.

149. At that time, MOL advised Global link that “they do not care if [All Coast] is really delivering to the correct destination (we would just have to send [All Coast] the correct address).” *See* Global Link Proposed Findings of Fact at ¶ 34.

RESPONSE: Admit All Coast is named as a defendant in the Complaint, but denies MOL made any such representation concerning All Coast. The email as stated appears to have been made by an employee at GLL to his colleagues at GLL. Except as specifically admitted, MOL can neither admit nor deny the remaining allegations contained in PFF 149. Deny PFF 149 has any relevance to the proceeding before the Commission. To the extent GLL intends to rely on PFF 149 to show MOL was on notice of “split routing”, MOL denies any such allegation. *See also* response to PFF 33 and 34.


150. Another defendant in the New Jersey suit is Evans Delivery Company. *See* Exhibit SS. As reflected in Global Link’s Proposed Findings of Fact at ¶ 39, on August 11, 2005, MOL engaged in a conference call in which it coordinated with Evans Delivery in regard to how to handle split routings involving Global Link.

RESPONSE: Admit Evans Delivery Company is named as a defendant in the lawsuit, but deny PFF 150 has any relevance to the proceeding before the Commission. To the extent GLL intends to rely on PFF 150 to show MOL was on notice of “split routing”, MOL denies. *See* reply to PFF 37 and 39.

* * *

To the extent not expressly admitted, MOL denies each and every allegation contained in PFF 1 through 150.

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Dated: May 1, 2013

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by depositing same in the United States mail, first class postage prepaid, and/or via email transmission, this 1st day of May, 2013:

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